IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BUILDING MATERIALS HOLDING CORPORATION., et al.,[1]	)	Case No. 09-12074 (KJC) (Jointly Administered)
	)	
Debtors.	)	**Hearing Date: September 29, 2009 @ 10:00 a.m. (ET)** **Objection Deadline: September 22, 2009 @ 4:00 p.m. (ET)**

MOTION OF WEIS BUILDERS, INC. FOR ORDER
GRANTING MODIFICATION OF THE AUTOMATIC STAY

Weis Builders, Inc. ("Weis"), by and through its undersigned counsel, pursuant to Section 362 of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 4001(a) and 9014 of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 4001-1, hereby moves this Court for the entry of an Order in the form attached hereto, modifying the automatic stay to permit the State Court Action (as defined below) to proceed to permit Weis to liquidate its claims against the above-captioned debtors (the "Debtors"), third-party defendants in the State Court Action, or in the alternative, ordering that the automatic stay applies exclusively to claims against the Debtors and is not effective against claims by and between Weis and the remaining non-debtor third-party defendants. In support of this Motion, Weis respectfully states as follows:

1 The Debtors consist of the following 12 entities: Building Materials Holding Corporation, BMC West Corporation, SelectBuild Construction, Inc., SelectBuild Northern California, Inc., Illinois Framing, Inc., C Construction, Inc., TWF Construction, Inc., H.N.R. Framing Systems, Inc., SelectBuild Southern California, Inc., SelectBuild Nevada, Inc., SelectBuild Arizona, LLC, and SelectBuild Illinois, LLC.

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334, Rule 9024 of the Federal Rules of Bankruptcy Procedure, and Rule 60(b)(6) of the Federal Rules of Civil Procedure.

2. This matter is a core proceeding pursuant to 28 U.S.C. §157(b).

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The predicate for the relief requested is section 362(d) of the Bankruptcy Code.

II. STATEMENT OF FACTS

5. The facts supporting this motion are contained in the Declaration of Peter Worthington, dated September 10, 2009 (the "Worthington Declaration") submitted contemporaneously herewith.

A. The Complaint

6. Rainbow Vision Santa Fe, LLC ("Rainbow" or the "Plaintiff") is a developer of full-service communities for diverse populations.

7. On or about April 28, 2004, Rainbow, as owner, and Weis, as contractor, entered into a contract for construction services for the purpose of development of a retirement community located at 500 Rodeo Road, Santa Fe, New Mexico (the "Project"). A true and correct copy of the Standard Form of Agreement between Rainbow and Weis, dated April 28, 2004, (the "Agreement") is attached hereto as **Exhibit 1**.

8. On February 6, 2007, Rainbow filed an action for breach of contract in the First Judicial District Court of the State of New Mexico for the County of Santa Fe (the "District Court") captioned *Rainbow Vision Santa Fe, LLC v. Weis Builders, Inc., et al*, Docket No. D-

0101-CV-2007-00010 (the "State Court Action").[2] The original action was focused primarily on construction delay and lien claims. A true and correct copy of the Complaint is attached hereto as **Exhibit 2**.

9. Rainbow generally alleged that the Project was not completed in a workmanlike manner, which resulted in property damage. In addition, the Complaint alleged that the defective work was not remedied, that contract warranty obligations were not honored, and that substantial completion of the Project was not achieved within the time periods specified in the Agreement.

10. Rainbow and Weis entered into a settlement agreement (the "Settlement Agreement") on January 23, 2008, concluding all claims except those that were major or pervasive and identified subsequent to the Agreement.

11. Pursuant to the Settlement Agreement, Weis performed substantial work to remediate the balconies, foundation, insulation, sill plates, and grading and drainage of the Project. Weis is further on notice of additional claims related to fire stop installation, draft barriers, framing, joist construction and installation, concrete flat work, penetration sealants, and waterproofing. As of September 2008, Weis incurred approximately $700,000.00 in expenditures for completion of the items specified in the Settlement Agreement.

B. The Third–Party Complaint

12. By virtue of a third party complaint filed by Weis and several amendments, the State Court Action has become a construction defect dispute with specific claims against various

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2 The full caption of the State Court action is Rainbow Vision Santa Fe, LLC v. Weis Builders, Inc.; PCI contractors, Inc.; and RLA, Inc. and Weis Builders, Inc. v. Rodgers Plumbing and Heating, Inc.; Eker Brothers, Inc.; TLC Company, EMCO, Inc.; Superior Contracting Corporation, d/b/a American National Insulation and Sealants; BMCW SouthCentral, L.P. d/b/a BMC Construction; BBD Construction, L.P., as successor in interest to or assignee of BMC Construction; Maverick Framing, Inc, as successor in interest to or assignee of BMC Construction, PCI Contractors, Inc.; Western Technologies, Inc.; Valley Fire Protection, Inc.; Storm Water Control, Inc.; Pinon Window & Door, Inc.; Michael Hunter Painting, Inc.; Mesa Erectors, Inc.; Lopez Roofing Service, Inc., Koch Mechanical; Klein Enterprises, LLC; Hughes and Associates, Inc.; Geo-Test, Inc.; F&J Home Builders, Inc.; Dawson Surveys, Inc.; and Bohannah-Huston, Inc.

subcontractors, including the Debtors.

13. On March 27, 2007, Weis filed a Third-Party Complaint against non-debtor third-party defendants (the "Third Party Complaint"), attached hereto as **Exhibit 3**.

14. On April 30, 2007, Weis filed the First Amended Third-Party Complaint against non-debtor subcontractors as third-party defendants (the "First Amended Third-Party Complaint"), a true and correct copy of which is attached hereto as **Exhibit 4**.

15. On or about March 7, 2008, Weis filed the Second Amended Third-Party Complaint against the Debtors and others as third-party defendants (the "Second Amended Third-Party Complaint"), a true and correct copy of which is attached hereto as **Exhibit 5**.

16. On December 29, 2008, the Third Amended Third-Party Complaint, still containing claims against the Debtor and additional subcontractors, was filed as part of the ongoing State Court Action. Accordingly, the Debtors are third-party defendants in the State Court Action. A true and correct copy of the Third Amended Third-Party Complaint is attached hereto as attached hereto as **Exhibit 6**.

17. In the Third-Party Complaint and amendments thereto, Weis generally alleges that the third-party defendants were the inspectors, subcontractors, engineers, and/or designers responsible for inspecting, constructing and/or designing the retirement community on Rainbow's property. Weis believes and alleges that each of the third-party defendants was negligent, careless, strictly liable, in breach of certain warranties, or was otherwise legally responsible for the events complained of in the Complaint and any resulting damages.

18. Weis specifically alleges a contribution and indemnity cause of action against all of the third-party defendants.

19. In its Third Amended Third-Party Complaint, Weis alleges that performance of the individual contractors, including the Debtors, contributed to the need for remediation.

20. Upon information and belief, the Debtors have in place a self-insured retention in the amount of $1,000,000.00. Upon further information and belief, the Debtors also have in place three insurance policies providing for insurance coverage in an aggregate amount of $45 million for the liabilities and damages alleged in the Second and Third Amended Third-Party Complaints (collectively, the "Insurance Policies"). True and correct copies of the certificates of insurance and the policies are attached hereto as **Exhibit 7**.

21. The State Court Action is currently pending, and a Third Amended Scheduling Order was entered on July 29, 2009, providing at ¶17 that initial mediation was to be completed by August 31, 2009. A true and correct copy of the Third Amended Scheduling Order is attached hereto as **Exhibit 8**.

22. Weis served discovery on the Debtors on November 20, 2008. A true and correct copy of the Notice of Service is attached hereto as **Exhibit 9**.

23. On April 30, 2009, Weis separately filed a claim, *Weis Builders Inc. v. Lloyd & Associates Architects, P.A. and Morey Walker Engineering d/b/a Walker Engineering*, Docket No. D-0101-CV-2009-01344, seeking indemnification by the design professionals for the related construction deficiency allegations. That case consolidated with the State Court Action. The Debtors are not parties to the *Weis v. Lloyd* matter.

24. On or about June 16, 2009 (the "Petition Date"), the Debtors filed a voluntary petition for protection under Chapter 11 of the Bankruptcy Code. The Debtors have continued in the operation of their business and the possession of their property as debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

III. THE AUTOMATIC STAY SHOULD BE MODIFIED TO PERMIT THE STATE COURT ACTION TO PROCEED

25. Weis requests relief from the 11 U.S.C. § 362 automatic stay pursuant to subsection (d), which provides, in part:

> (d) On request of a party in interest and after notice and a hearing the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay—
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest[.]

26. Weis submits that "cause" exists to modify the automatic stay. 11 U.S.C. § 362(d)(1). "Cause" is not defined in the Bankruptcy Code; it must be "determined on a case-by-case basis." *In re Rexene Products Company*, 141 B.R. 574, 576 (Bankr. D.Del. 1992), citing *Int'l Bus. Machines v. Fernstrom Storage & Van Co.*, 938 F.2d 731, 735 (7th Cir. 1991). In *Rexene Products*, this Court stated as follows:

> The legislative history indicates that cause may be established by a single factor such as "a desire to permit an action to proceed . . . in another tribunal," or "lack of any connection with or interference with the pending bankruptcy case." H.R.Rep. No. 95-595, 95th Cong., 1st Sess., 343-344 (1977) U.S. Code Cong. & Admin. News pp.5787, 6300. *See also In re Drexel Burnham Lambert Group, Inc.*, 113 B.R. 830, 838 n.8 (Bankr. S.D.N.Y. 1990) (citing various findings of § 362(d)(1) "cause" to permit litigation in another forum such as liquidation of a personal injury, arbitration or specialized jurisdiction claim). The legislative history to section 362(d)(1) emphasizes the section's applicability to proceedings in another tribunal. "[I]t will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere." H.R.Rep. No. 595, 95th Cong., 1st Sess., 341 (1977). This theme is echoed in the equitable balancing test most courts apply to determine if cause exists to lift the stay to allow pending litigation to proceed or continue in another forum.

141 B.R. at 576 (citations omitted).

27. In *Rexene Products*, the Court held that the following test should be used to decide whether relief from the stay should be granted:

a) Whether any great prejudice to either the bankruptcy estate or the debtor will result from continuation of the civil suit,

b) whether the hardship to the [non-bankrupt party] by maintenance of the stay considerably outweighs the hardship of the debtor, and

c) whether the creditor has a probability of prevailing on the merits.

Rexene Products, 141 B.R. at 576 (citations omitted). The movant on a relief from stay motion has the initial burden of establishing a prima facie case. *Id.* at 577; *In re Laguna Associates Limited Partnership*, 147 B.R. 709, 714-15 (E.D. Mich. 1992). If the movant does so, then the burden shifts to the debtor who has the burden of ultimate persuasion. *Id.*

28. The *Rexene Products* test has been repeatedly applied by this Court. *See e.g., In re Continental Airlines, Inc.*, 152 B.R. 420, 424 (D.Del. 1993); *In re SCO Group, Inc.*, 395 B.R. 852, 857 (Bankr. D.Del. 2007); *In re Unidigital Inc.*, 2000 WL 33712306 at *1 (Bankr.D.Del. 2000); *In re Integrated Health Services, Inc.*, 2000 WL 33712483 at *1 (Bankr. D.Del. 2000); *In re Levitz Furniture Inc.*, 267 B.R. 516, 523 (Bankr. D.Del. 2000); *In re Pursuit Athletic Footware, Inc.*, 193 B.R. 713, 718 (Bankr. D.Del. 1996). In each of these cases, relief from the stay was granted.

29. This Court has also considered general policies underlying the automatic stay when deciding whether to grant a motion to lift the stay. *SCO Group*, 395 B.R. at 857. These policies, which have been outlined by the United States Court of Appeals for the Second Circuit, are:

> 1) whether relief would result in a partial or complete resolution of the issues; 2) lack of any connection with or interference with the bankruptcy case; 3) whether the other proceeding involves the debtor as a fiduciary; 4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; 5) whether the debtor's insurer has assumed full responsibility for defending it; 6) whether the action primarily involves third parties; 7) whether litigation in another forum would prejudice the interests of other creditors; 8) whether the judgment claim arising from the other action is subject to equitable subordination; 9) whether the moving party's success in the

> other proceeding would result in a judicial lien avoidable by the debtor; 10) the interests of judicial economy and the expeditious and economical resolution of litigation; 11) whether the parties are ready for trial in the other proceeding; and 12) impact of the stay on the parties and the balance of the harms.

Id. (quoting *In re Sonnax Indus., Inc. v. Tri Component Prods. Corp.*, 907 F.2d 1280, 1287 (2d Cir. 1990)).

30. In the present case, the first prong of the *Rexene Products* test is clearly met. No great prejudice to the Debtors will result from the lifting of the stay. Liquidation of Weis' claims requires completion of the litigation process that commenced over two years ago in the State Court Action. First, Weis seeks to recover on any judgment it obtains against the Debtors solely from available insurance coverage,[3] which is property in which the Debtors have no interest. *In re Louisiana World Exposition, Inc.*, 832 B.R. 1391 (5th Cir. 1987); *Matter of Edgeworth*, 993 F.2d 51 (5th Cir. 1993). The Debtors' insurance proceeds are not assets of the bankruptcy estate which section 362 of the Bankruptcy Code was intended to protect. Since the insurance proceeds are not property of the Debtors' estate, they cannot be necessary for an effective reorganization, nor can they be property in which the Debtors have equity.

31. Moreover, the maximum exposure of the Debtors in the State Court Action is approximately $700,000.00, an amount that will have an insignificant effect on the bankruptcy estate that is comprised of over $261 million in assets.[4]

32. Second, continuation of the State Court Action would not distract the Debtors from their reorganization efforts because the Debtors have separate counsel responsible for the State Court Action. Consequently, the active involvement of counsel involved in the Debtors'

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[3] Upon information and belief, the Debtors have a self-insured retention valued at $1,000,000.00. Accordingly, Weis will pursue recovery of the first $1,000,000.00 of any judgment awarded through the claims process in this bankruptcy case.

[4] *See* Amended Schedules/Statements filed: Sch A, Sch B, Sch D, Sch E, Sch F, Sch G, Sch H, Sum of Schs, Decl Concerning Debtors Schs [D.I. 261].

reorganization efforts would be unnecessary. On June 16, 2009, the Debtors filed a plan of reorganization (the "Plan") and disclosure statement (the "Disclosure Statement"), which were both amended on July 27, 2009.[5] The confirmation hearing with respect to the Plan has been adjourned to September 18, 2009. Accordingly, the State Court Action would not divert time and energy from the Debtors' promulgation of a chapter 11 plan. In light of the foregoing, no great prejudice to the Debtors will result from lifting the stay.

33. Moreover, discovery was served on the Debtors pre-petition on November 20, 2008. The Debtors cannot at this late date assert that they would be prejudiced by such discovery requests.

34. The second prong of the *Rexene Products* test is likewise clearly met, as the hardship to Weis clearly outweighs any hardship to the Debtors that might result from modification of the stay. The State Court Action has been pending for over two years. The District Court is familiar with the facts of the case and has overseen substantially all of the discovery. It would be a hardship to Weis and the Debtors to re-start their litigation and begin anew in Delaware, particularly when this litigation has proceeded to mediation.

35. The Debtors are an essential party to the completion of initial mediation. The Debtors represent three of the eleven active third-party defendants participating in the negotiations to resolve the dispute concerning proportional liability for the Project's remediation

[5] See Amended Chapter 11 Plan [D.I. 314] and Amended Disclosure Statement [D.I. 316].

costs. Prior to the August 31, 2008 initial mediation deadline, each of the individual third-party defendants was to meet with the mediator for fact-finding, and negotiation with each third-party defendant regarding its allocation of fault. Mediation can not be concluded until each of the third-party defendants, including the Debtors, completes such initial conference with the mediator. Modification of the automatic stay to allow the Debtors' participation in the mediation is necessary to potential settlement of the State Court Action and avoidance of unnecessary and expensive litigation.

36. The continued suspension of the State Court Action as it relates to Weis' Third Amended Third-Party Complaint will work a substantial hardship on Weis' ability to investigate and prosecute its third-party claims against the Debtors and the other non-debtor third party defendants. The Debtors' participation in the discovery process would increase its efficiency and assist the parties in resolving disputes regarding which subcontractor or party was involved or responsible for the separate construction elements. The Debtors are believed to have information that is crucial to the development of Weis' case against the other non-debtor third-party defendants. The Debtors' first-hand knowledge of the construction of the Project is vital to the assessment of liability. Further, the Debtors have unique and particular knowledge regarding their sub-subcontractor, former business partner, and fellow third-party defendant, Maverick Framing, Inc.

37. Moreover, the events that gave rise to the State Court Action occurred in New Mexico, and the majority of witnesses to be deposed are likewise located in New Mexico. It would be a hardship to Weis to have these witnesses testify in Delaware or, in the alternative, to rely upon their testimony exclusively by way of depositions. Moreover, New Mexico law governs any determination of liability in the State Court Action, as well as any damages to which

the Plaintiff and/or Weis may be entitled. Weis' Third Amended Third-Party Complaint should be resolved in New Mexico as part of the State Court Action.

38. Cause to vacate the stay further exists due to the delay Weis will suffer in liquidating its third-party claims against the Debtors as part of the State Court Action. One Court stated:

> A number of courts have attributed a considerable weight to the fact that a plaintiff, by having to wait, may effectively be denied an opportunity to litigate. The aging of evidence, loss of witnesses and crowded court dockets contribute to these hardships. The opinions reflect that the courts have regarded the opportunity to litigate the issue of liability as a significant right which cannot be easily set aside, despite the existence of a bankruptcy proceeding.

In re Bock Laundry Machine Company, 37 B.R. 564, 566 (Bankr. N.D. Ohio 1984).

39. On the other hand, there is no great hardship to the Debtors in requiring them to participate in their defense. Courts have generally not been persuaded by a debtor's arguments concerning the cost of defense:

> The courts have not, however, ascribed much significance to the fact that the debtor will be required to participate in their defense, especially when the debtor's insurer is obligated to provide counsel. See for example, *Matter of Holtkamp,* [669 F.2d 505 (7th Cir. 1982)]. This position has been sustained despite the fact the debtor was uninsured and was required to assume the costs of its own defense. *In re Terry*, [12 B.R. 578 (Bankr.E.D.Wis. 1981)], *In re McGraw*, [18 B.R. 140 (Bankr.W.D. Wis. 1982)].

Id. at 567. The Court of Appeals for the Third Circuit concurs with this position:

> The Court of Appeals for the Third Circuit has declared that litigation expenses do not constitute an injury sufficient to justify the enjoining of litigation against the Debtor. *In re Davis,* 691 F.2d 176, 178 (3d Cir. 1982), quoting *Younger v. Harris*, 401 U.S. 37, 46 (1971).

Matter of Nicholas, Inc. (Nicholas v. National Labor Relations Board), 55 B.R. 212, 217 (Bankr. N.J. 1985). For the foregoing reasons, the hardship to Weis in denying the motion to modify the stay considerably outweighs any hardship to the Debtor in continuing the State Court Action.

40. Finally, the third prong of the *Rexene Products* test is also clearly met. This Court has previously held that the required showing of probability of success on the merits is "very slight." *See Rexene Products*, 141 B.R. at 578. The legal and factual issues presented by Rainbow's Complaint and Weis' Third Amended Third-Party Complaint relate to construction industry standards, methods, and materials, as used and applied in the construction of residential homes as well as interpretation of the Agreement. Thus, the State Court Action clearly presents triable factual issues. Moreover, no party has filed a motion for summary judgment. *See, e.g., Fernstrom*, 938 F.2d at 736 (ordering automatic stay lifted where the underlying action was not frivolous).

41. Weis respectfully submits that in view of the foregoing, the automatic stay should be modified to permit the State Court Action to continue and to enable Weis to liquidate its judgment and satisfy any judgment obtained against the Debtors from the Debtors' available insurance coverage. The Debtors' estate will not be prejudiced by continuing the State Court Action, the hardship to Weis by maintenance of the automatic stay greatly outweighs the hardship to the Debtors, and Weis has more than a reasonable chance of prevailing on the merits.

A. **The Automatic Stay Does Not Apply to Non-Debtors**

42. Attached hereto as **Exhibit 10** is a true and correct copy of a letter from Debtors' counsel that asserts that the State Court Action cannot proceed as to any party unless and until the Debtors are severed or dismissed from the case.

43. Weis submits that such assertion is incorrect as a matter of law that it is permitted to pursue the State Court Action against non-debtor third party defendants.

44. The automatic stay does not prevent Weis from proceeding against the remaining non-debtor third-party defendants in the State Court Action. The automatic stay provisions of

Section 362 of the Bankruptcy Code apply only to debtors and do not prevent litigation from proceeding against non-debtors. *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991); *In re SN Liquidation, Inc.*, 388 B.R. 579, 584-585 (Bankr. D.Del. 2008); *In re Desa Holdings Corp.*, 353 B.R. 419, (Bankr. D.Del. 2006). The Third Circuit has held that "the automatic stay is not available to non-bankrupt co-defendants of a debtor even if they are in a similar legal or factual nexus with the debtor." *Maritime*, 959 F.2d at 1205.

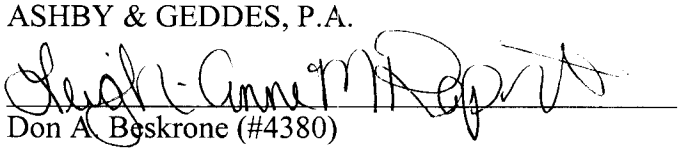
45. Accordingly, if the Court does not lift the automatic stay, it should not enter an order determining that Weis is not precluded from proceeding against the non-debtor third party defendants.

IV. CONSLUSION

WHEREFORE, Weis respectfully requests that the Court enter an Order in the form attached: (i) modifying the automatic stay to allow the State Court Action to proceed to judgment and to enable Weis to satisfy its claims, in the State Court Action solely from the Debtors' existing insurance coverage; or, in the alternative, (ii) ordering that the automatic stay applies exclusively to claims against the Debtors and is not effective against claims by and between Weis and the remaining non-debtor third-party defendants; and (iii) granting Weis such other and further relief as the Court deems just and appropriate.

Dated: September __, 2009

ASHBY & GEDDES, P.A.



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Attorneys for Weis Builders, Inc.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BUILDING MATERIALS HOLDING CORPORATION., et al.,[1]	)	Case No. 09-12074 (KJC)
	)	(Jointly Administered)
	)	
Debtors.	)	**Hearing Date: September 29, 2009 @ 10:00 a.m. (ET)**
	)	**Objection Deadline: September 22, 2009 @ 4:00 p.m. (ET)**
	)	

NOTICE OF MOTION OF WEIS BUILDERS, INC. FOR ORDER GRANTING MODIFICATION OF THE AUTOMATIC STAY

PLEASE TAKE NOTICE that on September 11, 2009, Weis Builders, Inc. ("Weis Builders") filed their **Motion for Order Granting Modification of the Automatic Stay** (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **September 29, 2009 at 10:00 a.m. (prevailing Eastern Time)** (the "Hearing") before The Honorable Kevin J. Carey, Chief Judge, The United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 5th Floor, Courtroom #5, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that the responses, if any, to the Motion shall be in writing, in conformity with the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the District of Delaware, filed with the Bankruptcy Court, and served upon, so as to be received by, the undersigned counsel on or before **September 22, 2009 at 4:00 p.m. (prevailing Eastern Time)**. Only properly and timely filed responses will be considered.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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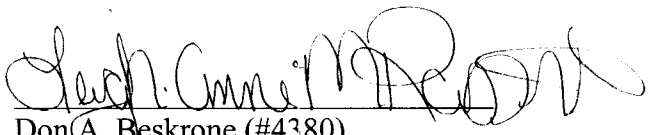
1 The Debtors consist of the following 12 entities: Building Materials Holding Corporation, BMC West Corporation, SelectBuild Construction, Inc., SelectBuild Northern California, Inc., Illinois Framing, Inc., C Construction, Inc., TWF Construction, Inc., H.N.R. Framing Systems, Inc., SelectBuild Southern California, Inc., SelectBuild Nevada, Inc., SelectBuild Arizona, LLC, and SelectBuild Illinois, LLC.

Dated: Wilmington, Delaware
September 11, 2009

ASHBY & GEDDES P.A.



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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BUILDING MATERIALS HOLDING CORPORATION, et al.,[1]	)	Case No. 09-12074 (KJC)
	)	
	)	(Jointly Administered)
Debtors.		

DECLARATION OF PETER WORTHINGTON
IN SUPPORT OF WEIS BUILDERS, INC.'S MOTION FOR ORDER GRANTING
MODIFICATION OF THE AUTOMATIC STAY

I, Peter Worthington, hereby declare as follows:

1. I am the Vice-President, Senior Living Group, of Weis Builders, Inc. ("Weis") in Minneapolis, Minnesota. I currently hold no claims against the Debtors or their estates.

2. As Vice-President of the Senior Living Group for Weis, my duties and responsibilities include all aspects of business development and operations for selected Senior Living Projects. The underlying tasks include, but are not limited to, client relations, contract negotiation with clients for construction and development of senior-living projects; operations management, senior level project oversight, with lower-level management staff responsible for direct construction operations. This declaration is made based upon my personal knowledge and the books and records kept in my office in the ordinary course of business.

3. Weis provides general contracting and construction management services for construction projects across the nation. Weis is a defendant and third-party plaintiff in an action pending in the First Judicial District Court of the State of New Mexico for the County of Santa Fe (the "District Court") captioned *Rainbow Vision Santa Fe, LLC v. Weis Builders, Inc., et al.*, No. D-

[1] The Debtors consist of the following 12 entities: Building Materials Holding Corporation, BMC West Corporation, SelectBuild Construction, Inc., SelectBuild Northern California, Inc., Illinois Framing, Inc., C Construction, Inc., TWF Construction, Inc., H.N.R. Framing Systems, Inc., SelectBuild Southern California, Inc., SelectBuild Nevada, Inc., SelectBuild Arizona, LLC, and SelectBuild Illinois, LLC.

0101-CF-2007-00010 (the "State Court Action"). The Debtors are third-party defendants to the State Court Action. I submit this declaration in support of the *Motion of Weis Builders, Inc. for Order Granting Modification of the Automatic Stay* (the "Motion").

4. I have reviewed the Motion and exhibits incorporated therein by reference, and I verify that true and correct copies of all the documents Weis intends to rely upon at the time of the hearing in connection with the Motion are attached to the Motion as Exhibits 1-10.

5. Weis, through its Senior Living Division, constructs residential multi-unit senior residential Projects. Rainbow Vision Santa Fe, LLC ("Rainbow") is a developer of full-service communities for diverse populations. On or about April 28, 2004, Rainbow, as owner, and Weis, as general contractor, entered into an agreement (the "Agreement") for construction services for the purpose of development of a retirement community located at 500 Rodeo Road, Santa Fe, New Mexico (the "Project"). The Project includes individual one and two-story condominiums, rental units owned by Rainbow, assisted living facilities and a community center. A true and correct copy of the Agreement is attached to the Motion as **Exhibit 1**.

6. On February 6, 2007, Rainbow filed a complaint against Weis, among others, (the "Complaint"), alleging that the Project was not completed in a workmanlike manner, which resulted in property damage. In addition, the Complaint alleged that the defective work was not remedied, that contract warranty obligations were not honored, and that substantial completion of the Project was not achieved within the time periods specified in the Agreement. A true and correct copy of the Complaint is attached to the Motion as **Exhibit 2**.

7. On January 23, 2008, Rainbow and Weis entered into a settlement agreement (the "Settlement Agreement"). The Settlement Agreement resolved all Rainbow claims, except those which were major or pervasive and identified subsequent to the Agreement, and obligated Weis to

perform remedial work at the project.

8. Weis performed and continues to perform remediation of the Project—and Debtors' work—pursuant to the Settlement Agreement. The Settlement Agreement required Weis to rebuild the balconies, correct the sill-plate overhang, replace missing insulation, and address grading and drainage at the Project. The Debtors' work is implicated in the balcony and sill-plate issues, along with other subcontractors.

9. On March 27, 2007, Weis filed a Third-Party Complaint against other third-party defendants (the "Third-Party Complaint"). A true and correct copy of the Third-Party Complaint is attached to the Motion as **Exhibit 3**.

10. On April 30, 2007, Weis filed the First Amended Third-Party Complaint against other subcontractors as third-party defendants (the "First Amended Third-Party Complaint"). A true and correct copy of the First Amended Third-Party Complaint is attached to the Motion as **Exhibit 4**.

11. On or about March 7, 2008, Weis filed the Second Amended Third-Party Complaint against the Debtors and others as third-party defendants (the "Second Amended Third-Party Complaint"). A true and correct copy of the Second Amended Third-Party Complaint is attached to the Motion as **Exhibit 5**.

12. In the Second Amended Third-Party Complaint, Weis generally alleges that the third-party defendants, including the Debtors, as subcontractors were responsible for deficiencies in the inspection and construction of the Project. Weis believes and alleges that each of the third-party defendants is negligent, careless, strictly liable, breached certain warranties, or is otherwise legally responsible for the events complained of in the Complaint and any resulting damages. Each third-party defendant had specific construction related responsibilities necessary for the completion of the

Project. The failures, identified by Rainbow, were identified as arising from the work of each third-party defendant/subcontractor. The Debtors, upon information and belief of Weis, were contracted to provide wood framing for the one and two-story residential units (labor and materials).

13. On December 29, 2008, Weis filed the Third Amended Third-Party Complaint (the "Third Amended Third-Party Complaint"). A true and correct copy of the Third Amended Third-Party Complaint is attached to the Motion as **Exhibit 6**. The Third Amended Third-Party Complaint alleges that performance of the individual contractors, including the Debtors, contributed to the need for remediation required in the Settlement Agreement. Weis' expert analysis indicates that the framing caused or contributed to the deficiencies identified at the Project. The deficiencies associated with the work of the Debtors include, improperly constructed balconies and the improper placement of the sill-plates over the edge of the concrete foundation and subsequent overhang of the framing members. The balcony construction deficiencies alleged against the Debtors include improper framing of the balcony decks on which the concrete floor slabs were constructed, and the improper installation of sliding glass doors without proper waterproofing. The Debtors are also responsible for the manner in which the Debtors dealt with voids or conflicts in the plans. The Debtors' labors at the Project resulted in water damage and structural concerns, which necessitated immediate and ongoing work at the Project. Weis anticipates further remediation work arising from new claims raised by individual unit owners and Rainbow's allegation of new pervasive deficiencies. The Debtors, and other subcontractor/third-party defendants, will be expected to participate in financial settlement or material/labor resolution of the alleged issues.

14. The Debtors are currently allocated 45% of the overall demand. The first stage of remediation exceeds $700,000 and the total demand nears $2,000,000 against all subcontractors.

15. To the best of my knowledge, information, and belief, the Debtors have in place a

self-insured retention in the amount of $1,000,000.00. The Debtors also have in place three insurance policies providing for insurance coverage in an aggregate amount of $45 million for the liabilities and damages alleged in the Third Amended Third-Party Complaint. True and correct copies of the relevant certificates of insurance and policies are attached to the Motion as **Exhibit 7**.

16. The Debtors are an essential party to completion of the initial mediation in the State Court Action. The Debtors represent three of the eleven active third-party defendants participating in the negotiations to resolve the dispute concerning proportional liability for the Project's remediation costs. The Debtors' first-hand knowledge of the construction of the Project is vital to the assessment of liability. Further, the Debtors have unique and particular knowledge regarding their sub-subcontractor, former business partner, and fellow third-party defendant, Maverick Framing, Inc. A true and correct copy of the Third Amended Scheduling Order dated April 21, 2009, requiring initial mediation prior to August 31, 2009 (see ¶17), is attached to the Motion as **Exhibit 8**.

17. Weis propounded discovery on the Debtor on November 20, 2008. A True and correct copy of the Notice of Service is attached to the Motion as **Exhibit 9**.

18. Prior to the August 31, 2009 initial mediation deadline, each of the individual third-party defendants is required to meet with the mediator for fact-finding and negotiation regarding each third-party defendant's allocation of fault. Mediation can not be concluded until each of the third-party defendants, including the Debtors, completes such initial conference with the mediator.

19. On or about July 10, 2009, Debtors' counsel asserted to Weis and other third-party defendants that continuation of the litigation against non-Debtors would result in sanctions being pursued against the parties and counsel. It is my understanding that these assertions caused the District Court to place a hold on the entire litigation. A true and correct copy of the letter from

Debtors' counsel dated July 10, 2009 is attached to the Motion as **Exhibit 10**.

20. The prejudice to Weis should the Motion not be granted is great. First, Weis would be forced to try the same case twice. This would result in a significant increase in expenses and may result in inconsistent verdicts. Second, most of the witnesses are located in New Mexico. If the Motion is not granted, these witnesses would also need to travel to Delaware to testify. Further, there is the risk that prolonging the litigation may result in witnesses passing away, having fading memories, or otherwise no longer being able or available to testify.

21. Modification of the automatic stay to allow the Debtors' participation in the mediation is necessary for the potential settlement of the State Court Action and avoidance of unnecessary, duplicative and expensive litigation.

22. The continued suspension of the State Court Action as it relates to the Third Amended Third-Party Complaint will work a substantial hardship on Weis' ability to investigate and prosecute its third-party claims against the Debtors. Moreover, the Debtors' participation in the discovery process would increase its efficiency and assist the parties in resolving disputes regarding which subcontractor or party was involved or responsible for the separate construction elements. The Debtors are believed to have information that is crucial to the development of Weis' case against the other non-debtor third-party defendants. The Debtors' first-hand knowledge of the construction of the Project is vital to the assessment of liability. Further, the Debtors have unique and particular knowledge regarding their sub-subcontractor, former business partner, and fellow third-party defendant, Maverick Framing, Inc.

23. Weis, acknowledges and accepts that in the event this Court does lift the automatic stay against the Debtors and the state court enters a judgment against the Debtors, Weis will be limited to recovery from available insurance proceeds and will seek recovery by way of proof of claim in this

Court.

24. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11TH day of September, 2009, at Minneapolis, Minnesota.

Peter Worthington, Vice President
Weis Builders, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BUILDING MATERIALS HOLDING CORPORATION, et al.,[1]	)	Case No. 09-12074 (KJC)
	)	(Jointly Administered)
	)	
Debtors.	)	**Related Docket Item No. __**

ORDER GRANTING MOTION OF WEIS BUILDERS, INC.
FOR MODIFICATION OF THE AUTOMATIC STAY

Upon the Motion (the "Motion") of Weis Builders, Inc. (the "Movant") for Order Granting Modification of the Automatic Stay; and adequate notice of the Motion having been given; and this Court being fully advised:

IT IS HEREBY ORDERED that the Motion is granted;

IT IS FURTHER ORDERED that the automatic stay imposed by Section 362 of the Bankruptcy Code is modified in order to permit the Movant to liquidate the claims against the Debtors in the State Court Action; and

IT IS FURTHER ORDERED that the Movant may not seek to collect from the Debtors on any judgment against the Debtors in the State Court Action, other than from available insurance, without first seeking a further modification of the automatic stay, except as might be permitted by existing and future orders of this Court; and

[1] The Debtors consist of the following 12 entities: Building Materials Holding Corporation, BMC West Corporation, SelectBuild Construction, Inc., SelectBuild Northern California, Inc., Illinois Framing, Inc., C Construction, Inc., TWF Construction, Inc., H.N.R. Framing Systems, Inc., SelectBuild Southern California, Inc., SelectBuild Nevada, Inc., SelectBuild Arizona, LLC, and SelectBuild Illinois, LLC.

IT IS FURTHER ORDERED that the automatic stay applies exclusively to claims against the Debtors and is not effective against claims by and between Weis and the remaining non-debtor third-party defendants in the State Court Action.

Dated: _____, 2009

_____
United States Bankruptcy Court
Chief Judge, Kevin J. Carey

Exhibit 1

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Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor

AGREEMENT
made as of the Twenty Eighth day of April in the year of Two Thousand and Four
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

RainbowVision Santa Fe LLC
4001 Office Court Road,
Suite 403
Santa Fe, NM 87505

and the Construction Manager:
(Name and address)

Weis Builders, Inc.
7645 Lyndale Aveque South
Minneapolis, MN 55423

The Project is:
(Name, address and brief description)

RainbowVision Santa Fe Retirement Community
500 Rodeo Road at Antigua
Santa Fe, NM 87505

The Architect is:
(Name and address)

Lloyd & Associates Architects
301 N. GuadalupeSuite 104
Santa Fe, NM 87501

The Owner and Construction Manager agree as set forth below:

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

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

The 1997 Edition of AIA® Document A201™, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

EXHIBIT
1

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™–1997, *General Conditions of the Contract for Construction, which is incorporated herein by reference.* For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™–1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™–1997 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

§ 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

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§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

~~§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the~~ Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of

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the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

.2 A list of allowances and a statement of their basis.

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

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(1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
(2) the Owner's first authorization to the Construction Manager to:
(a) award a subcontract, or
(b) undertake construction Work with the Construction Manager's own forces, or
(c) issue a purchase order for materials or equipment required for the Work.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™–1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

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ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials; ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™–1997, the Architect does not have such authority.

§ 3.3 ARCHITECT

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The Owner shall authorize and cause the Architect to provide Additional Services , requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be

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provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS
The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION
§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

The Construction Manager's fee for Preconstruction Phase Services shall be Seven Thousand Dollars ($7,000), in accordance with Weis's 1/22/03 letter of intent.

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond April 1, 2004 in accordance with Weis's 12/22/03 letter of intent.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 4.2 PAYMENTS
§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable Thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

Interest rate shall be 4% above US Bancorp Prime Rate.
(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

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§ 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

Base Fee will be Three percent (3.0%) of the Cost of the Work as defined in Article 6. For changes in the Work not associated with any " Resident Upgrade Packages" that are to be offered on a unit-by-unit basis, the fee for additive changes will be 3.0% and for deductive changes the fee will be 0.0%.

5.1.2

In addition to the basic fees in 4.1.1 and 5.1.1 above, the Owner shall pay the Construction Manager a Resident Upgrade Fee equal to 15% of the cost of the work, toether with such reasonable administrative costs that the Construction Manager will incur directly related to the performance of such work, associated with the Resident Upgrade Packages that the Owner is planning to offer. It is the intent that a limited number of such Upgrade packages will be offered by the Owner, and that once the scope and cost for the upgrades being considered is established, the Owner and Construction Manager will incorporate by Amendment to this Contract the terms and conditions pursuant to which the Construction Manager shall perform such work. It is intended that the Construction Manager will establish a lump sum price per unit type for each Upgrade Package to be offered, and that said lump sum price shall include the fee and administrative costs described above, as well as define the date for each unit by which the Owner must direct the Construction Manager to proceed with the Upgrade. Unit upgrades for which direction to proceed is given after the agreed upon date, or which reflect a deviation in scope from the defined Upgrade Packages will be evaluated separately, and a cost and time adjustment proposed, by the Construction Manager.

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. At time of Final Completion, any costs savings shall be returned 100% to the Owner and 0% to the Construction Manager.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.3 CHANGES IN THE WORK

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™–1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™–1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™–1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

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§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

"Article 5.4: Commencement and Completion has been added. See Exhibit A."

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement. To the extent that some of the Construction Manager's supervisory and administrative personnel located at the Construction Manager's main office provide service to the project, a portion of their wages and salaries will be included in the cost of work and will be reimbursed in accordance with Exhibit C.

Classification Name

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed,

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whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds. ~~(If charges for self-insurance are to be included, specify the basis of reimbursement.)~~

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™–1997 or other provisions of the Contract Documents.

.6 Data processing costs related to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

.10 All premiums (without markup) and deductibles associated with Builder's Risk insurance provided by the Construction Manager at the Owner's request.

.11 All premiums (without markup) and deductibles associated with providing professional liability insurance for the mechanical and electrical design services for the condominiums and IL units.

§ 6.1.7 OTHER COSTS

.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager except, however, where conditions requiring such action were caused by or are the result of the Construction Manager's negligence.:

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.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™–1997.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA or A201™–1997 other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

.6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

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

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 See Exhibit A for revised Accounting Records requirements.

ARTICLE 7 CONSTRUCTION PHASE

§ 7.1 PROGRESS PAYMENTS

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

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

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§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™–1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee, less retainage of Five percent (5.00%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five percent (5.00%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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7.1.8.1 As an alternative means of achieving the 5% retainage described in 7.1.7 and 7.1.8 above, the Construction Manager and the Subcontractors may allocate a portion of their respective contract amounts to a "Final Completion" line item within each firm's schedule of values. The portions of each contract so allocated shall be equal to the 5% retainage stipulated. Billing against any such "final completion" line item in a schedule of values will be allowed only under the same circumstances as otherwise defined in the contract documents for the reduction or release of retainage.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™–1997 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™–1997. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™–1997.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's

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accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11 1 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

(Paragraph deleted)

None

8.1.2 Insurance provided will be per the construction Manager's standard policy. The Construction Manager will provide the Owner with a statement of the additional premium cost (if any) associated with other insurance coverage as the Owner may want to consider. If the Owner elects to require the Construction Manager to provide other coverage or limits, then the contract will be adjusted accordingly.

§ 8.1.3

(Paragraph deleted)

§ 8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:

$10,000 Deductible Per Occurrence

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(Paragraph deleted)

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager shall (Insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to One hundred percent (100.00%) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner after the contract is executed and three days before the commencement of any Work at the Project site. Further, Construction Manager shall deliver a binding commitment for the issuance of such bonds at least two weeks prior to the estimated date for the closing on Project financing. In the event of any early start as identified in paragraph 4.2.1.1 Owner may require Construction Manager to provide such bonds. Owner shall provide Construction Manager with 10 days notice of such requirement and stipulate in such notice the time for providing same, and the amount of coverage required by owner.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™–1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™–1997, *General Conditions of the Contract for Construction.*

§ 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 9.2.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™–1997, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™–1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for

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Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager.

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™–1997.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™–1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™–1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

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11.1 thru 11.4
See Exhibit A

11.5
It is understood and agreed that the GMP is for the total cost of the work and that cost over-runs from one line item can be offset by cost savings from another line item.

11.6
All personnel listed in Exhibit C as a "Reimbursable as a cost of the work" shall be included in the cost of the work per Article 7.2, subject to the GMP per Article 6.1.2.2.

11.7
The following procedure is agreed to by Owner and or Owner's lender and Title Company in the event of a lien being filed by one of the Contruction Manager's Vendors and/or Vendor's Vendor(s): At the Construction Manager's sole discretion either 1. Construction Managershall make a cash deposit equal to 150% of each lien amount in separate escrow account held by Owner's Title Company on behalf of the; Construction Manager or 2. The Construction Manager may provide a lien transfer bond for the amount of the lien. Upon said deposit being made or lien bond being provided by Construction Manger, Owner and or Owner's Lender, and Title Company shall immediately disburse to Construction Manager any monies owed to Construction Manager under the terms of this contract.

11.8
Owner and Construction Manager agree to the following punch list procedure for each phase of the project:
1. Prior to issuance of temporary of Full Certificate of Occupancy by City, Owner and/or Owner's designated representative(s) shall prepare one original interior and exterior punch list.
2. Within 7 calendar days after completion punch list work by Construction Manager, Owner and/or Owner's representative(s) will re-inspect to confirm original punch list items are complete.
3. New items will not be added to the original punch list at any time except for items which are substantial (i.e. no hot water) and thus were obviously missed during original punch list items.
4. Any item(s) not included in original punch list shall be considered warranty item(s).
5. Warranty items shall not be considered outstanding punch list items and thus shall not be subject to withholding of final payments.

11.9
If a discrepancy occurs within this Agreement and/or between this Agreement and other contract documents, it is understood and agreed that Article 11 of this Agreement, the balance of this Agreement, and Exhibits "A", "B", "C" and "D"(in that order) shall govern.

11.10
If interest costs occur per Paragraph 4.2, the cost shall be reimbursed by issuance of an Owner Change Order.

11.11
Architect shall return all submittals (i.e. shop drawings) to Contractor within 10 working days of date received from Contractor.

11.12
Modification and/or extension of project completion date due to "weather days" shall be as outlined in Exhibit "D" attached hereto.

11.13
The following Exhibits, attached hereto, form part of the Contract Documents:
Exhibit A: Modifications to the A121CM
Exhibit B: Supplementary Conditions
Exhibit C: Personnel Billing Rates and Matrix

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Exhibit D: Definition of Weather Days.
Exhibit E: Project Scope and Budget Summary
Exhibit F: Preliminary Divisional Cost Breakdown
Exhibit G: Pre-Construction Phase Schedule
Exhibit H: Preliminary Construction Phase Schedule

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

OWNER	CONSTRUCTION MANAGER
(Signature)	(Signature)
DON SILVER, PRES	PETER WARRINGTON, VICE PRESIDENT
(Printed name and title)	(Printed name and title)
April 30, 2004	APRIL 28 2004
Date	Date
ATTEST	ATTEST

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit A
Additional Provisions/Modifications based on the AIA A121CMC (2003 Edition)

5.4 COMMENCEMENT AND COMPLETION

Add the following paragraphs:

5.4.1 The date of commencement is the date from which the Contract Time of subparagraph 5.4.2 is measured; it shall be the date of the giving of the Notice to Proceed (the "Commencement Date"). The Owner shall issue the Notice to Proceed within ten calendar days of the last to occur of all of the following (the "Conditions to Commencement"): (i) closing of financing acceptable to Owner, sufficient in an amount to satisfy the Owner's financial obligations hereunder, and (ii) receipt of all permits and approvals necessary to allow commencement and continuation of construction. In no event shall the Construction Manager commence any work on site by placing materials at the site or by conducting other work at the site until a Notice to proceed has been given.

The immediately aforementioned notwithstanding, Construction Manager and Owner acknowledge that prior to receiving a Notice to Proceed the Construction Manager may be required to enter into certain other subcontracts, issue purchase orders, or make similar commitments which, if the Project were not to proceed would result in the incurrence, by Construction Manager of certain costs, financial penalties, or other like or similar expenses. Owner agrees to reimburse Construction Manager all such costs, penalties, or similar expenses, so long as, and only to the extent that Construction Manager has received Owner's written approval prior to the incurrence of such costs, and/or the entering into such subcontracts, authorization of such purchase orders or making such similar commitments. Any activity conducted hereunder shall in no way effect the dates established for substantial completion for each phase as shall be provided for in Amendment No. 1 hereto.

5.4.2 It is anticipated that the Work is to be completed in phases so as to permit residents of the Project to move in on a phased basis (each of which shall be referred to as a "Phase").

.1 Substantial Completion of each Phase is to occur on or before an agreed date. The agreed dates for each Phase shall established by Amendment No. 1 to this Agreement at the time the GMP is established, which shall be an agreed upon number of calendar days from the Commencement Date. Once established each of these days shall be measured from the Commencement Date and may only be extended in accordance with the Contract Documents.

.2 Each date by which Substantial Completion of a Phase must occur pursuant to the Contract Documents shall be referred to as a "Phase Completion Deadline". The period of time from the Commencement Date to the applicable Phase Completion Deadline shall be referred to as the "Phase Contract Time".

.3 The Owner and the Construction Manager acknowledge that if the Construction Manager fails to achieve substantial completion of a Phase before the applicable Phase Completion Deadline, the Owner will suffer damages which are difficult to ascertain. However, the Owner and the Construction Manager agree that the degree to which the Owner will be damaged by the Construction Manager's failure to substantially complete a particular Phase of the Project within the Phase Contract Time generally will decrease as the overall Project nears Substantial Completion. Accordingly, the Construction Manager agrees to pay the Owner as liquidated damages with respect to each particular Phase, and not as a penalty, for each calendar day that passes after the Phase Completion Deadline has expired for the particular Phase of the Project, until the date that the Construction Manager achieves Substantial Completion of that particular Phase, an amount equal to the portion of the GMP allocable to that particular Phase times the construction financing daily interest for Project (the "Stipulated Damage

Amount"). Any liquidated damages payable by the Construction Manager as to a particular Phase shall then be determined by multiplying the Stipulated Damage amount by each day of delay. The Stipulated Damage Amounts for each phase shall be established by an amendment hereto at the closing for financing on the Project.

.4 For purposes of determining that portion of the GMP allocable to a particular Phase, the following method of calculating same will be utilized:

(i) Reasonably determine that amount of the total GMP which generally applies to construction of the Project (as a whole) by adding the sum of the following amounts contained within the GMP: (Specific amounts to be determined when GMP is established by Amendment to the Contract.)

Site Development	$_____
General Conditions	$_____
Construction Manager's Fee	$_____
Other	$_____
Total	$_____

(ii) Subtract total in (i) above from the total GMP to determine the "remaining GMP".

(iii) Utilize the approved Schedule of Values and construction costing information to calculate the percentage of the cost of a particular Phase to the "remaining GMP" amount as determined in (ii) above.

(iv) Apply the percentage from (iii) above for the particular Phase(s) to the GMP.

.5 The Stipulated Damage amount for each Phase is intended to be cumulative of the other Phases. Accordingly, if the Phase Completion Deadline for more than one (1) Phase shall have elapsed without the applicable Phases having been substantially completed, then the Stipulated Damage Amount for each Phase not so substantially complete shall be due and owing by the Construction Manager to the Owner. The Owner may collect the Stipulated Damage Amounts by withholding them from payments due the Construction Manager or by separate demand. The Stipulated Damage Amounts provided herein shall be in lieu of all other claims, costs, losses, damages and/or expenses that the Owner might otherwise have against the Construction Manager by reason of its failure to achieve Substantial Completion before the relevant Phase completion Deadline, whether arising from contract or tort, or actual, direct, indirect or consequential damages, and the Owner hereby releases the Construction Manager therefrom.

.6

.1 The Construction Manager agrees that final completion of each Phase of the Work shall occur as soon as possible after Substantial Completion of the Phase, but no later than thirty (30) calendar days after the date on which Substantial Completion of that Phase has occurred, as evidenced by the Architect's Certificate of Substantial Completion. Final payment as to a Phase shall be due upon final completion of such Phase.

.2 Owner acknowledges that there may be certain items which may be on order that, through no fault of the Construction Manager, may not arrive and/or otherwise be available for incorporation into the Work within said thirty (30) day period. To the extent that Owner, in Owners sole discretion, accepts a Phase as having achieved final completion, even though such items remain outstanding, Owner may, (a) acknowledge such acceptance, and (b) withhold up to one and one half (1.5) times the total cost (as determined by the Construction Manager) for each Phase, or $5000 for each Phase (whichever is greater), of such Work which remains incomplete or unincorporated.

.3 Further, it is the intent that outstanding items described in 5.4.2.6.2 are to be secured and installed as quickly as possible -- preferably within five (5) days after the Construction Manager receives those items. It is acknowledged that some items may be more significant than others in terms of the operation or marketability of the project. It is also acknowledged that unless determined otherwise, the costs incurred by the Construction Manager for procuring, expediting and installing the items covered by 5.4.2.6.2 are reimbursable costs as defined under Article 6 of the Contract. Accordingly, it may be less costly for the Owner, and less disruptive to the operation of the facility, to have several items accumulated and installed at one time rather than have each item installed as it is delivered. Therefore, for each item outstanding as of Substantial Completion, within five (5) days the Construction Manager shall provide the Owner, in writing, with a proposed plan indicating the expected delivery date and proposed installation date for each item. The Owner and Construction Manager will jointly review (and revise as needed) said plan and reach an agreement on the plan. The Construction Manager will report to the Owner on a weekly basis of the status of the items remaining to be installed, and immediately notify the Owner of any change in delivery date or installation date due to unforeseen procurement or delivery problems. If after receiving an outstanding item the Construction Manager fails to commence the Work within five (5) days after agreed upon commencement date, or subsequently fails to complete the Work in accordance with the agreed upon schedule,the Owner may exercise its right to carry out the work as provided in section 2.4 of the A201 General Conditions

.4 The provision stated above for withholding 1.5 times the cost of items outstanding at the time of Substantial Completion does not apply to any Upgrade Options initiated by the Owner subsequent to the decision date established by the Construction Manager for each upgrade option proposed for a given residential unit.

.7 Except for the portions of the project which the Owner has requested completion and occupancy prior to the completion of the Commons Areas in the El Centro building, it is the intent that when developing the Phase Completion Deadlines described in 5.4.2.1 and 5.4.2.2 above, for the purposes of determining what, if any, stipulated damage amount may be owed by Construction Manager, no phase shall be deemed to have achieved Substantial Completion until such time as (1) the common areas (as defined in Amendment No. 1) portion of the Project shall have achieved Substantial Completion or (2) the Owner agrees to deem the phase Substantially Complete or (3) the Owner takes beneficial occupancy of all or part of the phase. Further and accordingly, when establishing the completion dates for each phase as provided for herein by amendment hereto, such amendment shall also provide that no phase shall be deemed complete for the purposes hereof unless (1) and/or until the commons area portion of the Project shall have attained substantial completion, (2) the Owner has agreed to deem the phase Substantially Complete, or (3) the Owner takes beneficial occupancy of all or part of the phase.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be satisfactory to the Owner and Owner's lender. The Owner and the Owner's accountants and the lender and lender's accountant or consultants shall be afforded reasonable access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement and the Project, (collectively "the records") and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. All Records shall be maintained in accordance with generally accepted accounting principles, consistently applied. There shall be an "open book" policy, in effect at all times with regard to all Records relative to the project

maintained by either the Construction Manager or the Owner, or anyone on their behalf, and each party shall have full and complete access to said Records maintained by the other at all reasonable times. The Construction Manager shall require all Subcontractors and Sub-Subcontractors retained on a cost-plus basis to retain Records and permit the same access by Owner as is required of the Construction Manager under this Article 6.4.

6.4.1.1 If the Owner, Owner's accountants, Lender or Lender's accountants elect to perform an audit of "the records" maintained by Construction Manager, said audit shall be performed within six (6) months of the Final Completion of the project. This stipulation does not affect the Construction Manager's obligation to maintain "the records" for the time period noted in 6.4.1.

6.4.2 If, at any time during construction, any inspection by the Owner or the Lender of the Construction Manager's Records or any other data relating to the contract documents reveals an overcharge or undercharge by the Construction Manager as confirmed by an independent auditor, the next Application for Payment shall be appropriately adjusted by the amount of such overcharge or ~~undercharge and related Fee.~~

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

Add the following:

7.1.11 To the extent of payments received by the Construction Manager from the Owner, the Construction Manager warrants the real property on which the Project is located will remain free of any legitimate and proper claims of lien arising from the Work performed by or through the Construction Manager. If any such liens are properly recorded, the Construction Manager shall have fifteen (15) business days from its receipt of written notice by the Owner or Owner's agent (including Title company) of such recording within which to discharge or secure by cash deposit or by construction lien transfer bond any such claims of lien. If the Construction Manager fails to discharge or otherwise secure such claim of lien within said time period, the Owner shall be entitled to satisfy the lien or take whatever action it deems appropriate to remove the lien from its property. All reasonable expenses and costs, including reasonable attorney's fees, incurred by the Owner after the abovementioned fifteen (15) day period to effect the discharge, securing and/or removal of any such claims of lien shall be promptly reimbursed to the Owner by the Construction Manager.

7.1.12 Concurrently with each Application for Payment, Construction Manager will deliver to Owner lien waivers (which may be conditioned upon payment) waiving all lien rights in respect of the Project, executed by Construction Manager, and executed by Subcontractors and suppliers covering amounts paid on their account or to be paid with funds received from such Application for Payment. All lien waivers shall be in form and substance satisfactory to Owner and the Owners Lender(s). Additionally, the Construction Manager shall provide further evidence regarding application of each progress payment to payment of all Subcontractors and suppliers providing services or material in respect of the Project, and shall comply with such other reasonable requirements as the Owners Lender(s) may impose with respect to obtaining advances of funds be applied to each Application for Payment."

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION

Add the following the following subparagraphs to 9.1.1:

.1 Claims between the parties to this Agreement shall be resolved as set forth below. At all times, the parties shall approach the dispute resolution process in good faith.

.2 In the event of a Claim between the parties, the parties shall promptly meet in good faith to resolve the Claim informally before invoking the dispute resolution procedures ~~outlined elsewhere in the Contract Documents, including the A201 General Conditions and~~ Supplementary Conditions, and below. If the parties are not able to quickly resolve the claim, either party may request participation by the Architect. Both parties shall promptly submit a written summary of its position to the Architect. Upon receipt of both summaries, the Architect shall immediately convene a formal meeting with the parties to further discuss the Claim. If the Claim is not resolved within three business days after the commencement of such meeting, either party may then commence the dispute resolution process defined in the Contract Documents.

.3 If the informal dispute resolution efforts outlined in 9.1.1.2 are not successful, then the dispute resolution procedures outlined in the balance of the Contract Documents. Any mediation conducted pursuant to this Paragraph 9.1 shall be heldin Santa Fe, unless the parties mutually agree otherwise.

.4 Intentionally omitted
.5 Intentionally omitted

.6 Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

.7 Intentionally omitted
.8 The arbitration shall be held in Santa Fe.

.9 Notwithstanding anything herein to the contrary, if (1) the Claims involve a proposed, net aggregate payment or reimbursement in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose, an "interested person or entity" means any person or entity if (a) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (b) the interested person or entity is so situated that the disposition of the claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as other wise permitted by the Contract Documents or by law.

ARTICLE 11
OTHER CONDITIONS AND SERVICES

11.1 The Construction Manager recognizes that any Lender involved in financing the Project will have requirements pertaining to this Agreement. The Construction Manager agrees to cooperate with and assist the Owner and the Architect in amending and supplementing the Contract Documents to conform to reasonable and customary requirements of any Lender (to the extent such requirements are acceptable to the Owner). However, the Construction Manager shall not be responsible for actually preparing amendments or supplements to the Contract Documents for any reason at any time. Such amendments or supplements may include, without limitation, provisions:

A. Naming any Lender as an additional insured on the Construction Manager's bonds and insurance policies and providing notice to any Lender of termination, cancellation or material modification of such policies.

B. Requiring approval of Applications for Payment by a consultant designated by a Lender prior to payment.

C. Agreeing not to amend Contract Documents without the reasonable and timely consent of the Lender.

D. Requiring approval of Change Orders by the Lender, provide that Lender approval will be provided on a timely basis and the Owner will use its best efforts to secure such timely approval.

E. Requiring notice of the Owner's default to the Lender, with a Lender having the right to cure, and requiring continued performance by the Construction Manager, provided that the Lender assumes all contract obligations of the Owner.

F. Subordinating any lien rights of the Construction Manager to rights of the Lender.

G. Requiring copies of all written notices to be sent to the Lender.

H. Granting the Lender the right to inspect the work and to examine records pertaining thereto.

I. Recognizing the pledge of the Owner's rights under Contract Documents to the Lender.

J. Requiring the Construction Manager to acknowledge, on the Lender's request, whether or not the Owner is in default of its obligations under the Contract.

K. Requiring the Construction Manager to assist the Owner in preparing and submitting reports and information concerning the Work as may be reasonably required by the Lender.

11.2 Nothing contained in Paragraph 11.2 or Paragraph 11.3 is intended to derogate from any other rights to terminate this Contract that may be granted the Construction Manager elsewhere in this Contract, including, but not limited to, the provisions of Article 2 and Article 14 of the General Conditions and Article 10 of this Agreement.

11.3 The Construction Manager may perform all or any part of the Work with its own forces, or through an Affiliate, provided that (1) the Construction Manager secures at least two competitive bids with respect to the work Construction Manager intends to perform (2) the Owner consents thereto in writing, which consent shall not be unreasonably withheld, after full disclosure by the Construction Manager to the Owner of the affiliation or relationship of the Affiliate to the Construction Manager and (3) any Work performed by an Affiliate shall be covered in a separate agreement between the Construction Manager

and the Affiliate, which shall satisfy all of the requirements for subcontracts as set forth in Paragraph 5.3 of the General Conditions and which shall be approved by the Owner in writing.

11.4 Any amounts payable hereunder which are not paid when due shall thereafter accrue interest at Wall Street Journal "prime" plus one percent (1%) per annum or at the highest rate allowed under the law of the state where the Project is located, whichever is less.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit B
Supplementary Conditions to the AIA A201 General Conditions (1997 Edition)

1. The following Supplementary Conditions shall apply to that certain Standard Form of Agreement Between Owner and Construction Manager (the "Agreement") dated

2. For purposes of these Supplementary Conditions, capitalized terms shall have the meaning given to them in the Contract Documents (as such term is defined in Article 1 of the Agreement), unless otherwise defined in these Supplementary Conditions.

3. ~~The following paragraphs supplement, modify, or amend that certain Contract Document entitled~~ "General Conditions of the Contract for Construction," AIA Document A201, Fifteenth Edition, 1997, Articles 1 through 14 inclusive (the "General Conditions"). Where only a portion of any provision of the General Conditions is supplemented, modified, or amended, the remaining portions of that provision shall remain unaltered and in effect. In the event of any inconsistency between the General Conditions and these Supplementary Conditions, the terms of these Supplementary Conditions shall apply. Hereinafter, all references to the General Conditions shall mean the General Conditions as amended by these Supplementary Conditions.

A. INTENTIONALLY OMITTED

B. PARAGRAPH 1.2.4 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.4 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with quality of the surrounding Work and of the construction of the Project generally.

C. PARAGRAPH 1.2.5 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.5 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

D. INTENTIONALLY OMITTED

E. SUBPARAGRAPH 1.5.1, add at the end of the first sentence: ", unless otherwise identified and incorporated by reference in Agreement."

F. SUBPARAGRAPH 2.2.5 Modify Subparagraph 2.2.5 as follows:

"In addition to the sets the Construction Manager used for bidding, the Owner will furnish a to be agreed upon number of sets of black and white prints of the Drawings and copies of the Project Manual free of charge for execution of the Work. Additional sets may be purchased from the Office of the Architect."

G. SUBPARAGRAPH 3.2.3, delete the second sentence, and add at the end: "If the Construction Manager performs Work knowing it involves such error, inconsistency, omission or difference without such notice to the Architect, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributed to correction."

H PARAGRAPH 3.3 "SUPERVISION AND CONSTRUCTION PROCEDURES" is hereby supplemented by the addition of the following sub-paragraphs:

3.3.4. The Construction Manager shall carefully check its own work and that of Subcontractors as the Work is being performed. The Construction Manager shall ensure that incorrect or faulty Work is corrected as soon as possible but in any event in a timely manner so as not to impact the project schedule.

3.3.5 During the finishing stages of the project, the Construction Manager shall make frequent inspections of the Work in the presence of the Architect or the Owners Representative and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work. The Construction Manager shall ensure that incorrect or faulty Work is corrected in accordance with 3.3.4.

I. PARAGRAPH 3.4 "LABOR AND MATERIALS" is hereby supplemented by addition of the following Subparagraphs 3.4.3 and 3.4.4:

3.4.4 Should the Owner make reasonable objection, based upon qualifications, fitness, behavior or temperament, to the presence of any personnel of Construction Manager or any subcontractor, such person shall not perform services on the Project site, or otherwise in connection with the Project, without written consent of the Owner.

3.4.5 The Construction Manager shall not change or replace the assigned Project Manager or Superintendent without prior written consent by the Owner.

J. SUBPARAGRAPH 3.5.1, Add to the end: "Construction Manager's warranties shall commence upon Substantial Completion of the Work for each Phase and continue for a period of one year thereafter."

K. PARAGRAPH 3.5 "WARRANTY" is hereby supplemented by the addition of the following sub-paragraphs:

3.5.2. In the event of a claim by the Owner against the Construction Manager under Paragraph 3.5.1. of these General Conditions (or under any other express written warranty made by the Construction Manager) for any item of Work performed under the Contract Documents, the Owner shall give notice (a "Warranty Notice") of the claim to the Architect and the Construction Manager and thereafter, the Architect or Architects authorized representative and the Construction Manager shall inspect the item(s) of Work in question. If following its inspection the Architect determines that any such item is included within the Construction Manager's warranty under the Contract Documents, then:

(a) Upon formal notification from the Architect, the Construction Manager shall have thirty (30) days, notwithstanding any other time period specified in the Contract Documents, to either (1) complete the cure for the item or, for a Longer Cure Item, commence the cure and thereafter diligently proceed to complete the cure, or (2) if the Construction Manager disputes the warranty coverage of the item, commence the

dispute resolution procedures described in Section 4.3 of the General Conditions.

(b) if upon the expiration of the thirty (30) day period the Construction Manager has failed to satisfy the provisions of either clause (a) (1) or clause (a) (2) immediately above, then the Owner shall have the right to engage a third party Construction Manager of the Owner's sole selection to cure or complete the cure of the warranty item at the Construction Manager's expense.

(c) If the Construction Manager fails to cure an item within the required time and if the item is finally determined by arbitration or, when permitted, judicial proceedings to be covered by any Construction Manager's warranty under the Contract Documents, then the Construction Manager shall be liable for all expenses incurred by the Owner in enforcing its warranty claim including legal and Architectural fees and expenses, an administrative charge of a percentage equal to Construction Manager's fee times the cost to cure the warranty item to cover the Owner's administrative costs to enforce the warranty claim, and, when a third party Construction Manager has been engaged by the Owner under this Paragraph 3.5.2, the costs and expenses of the third party Construction Manager.

L. INTENTIONALLY OMITTED

M. ARTICLE 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES is supplemented by the following replacement language for Subparagraph 3.12.4

3.12.4 Shop Drawings, Product Data, Samples and similar submittals which are required by the Contract Documents to be submitted for Architect's review shall become Contract Documents upon Architect's review and approval. Submittals which are not required by the Contract Documents to be submitted for Architect's review are not Contract Documents.

N. ARTICLE 3.16 "ACCESS TO WORK" is hereby supplemented by addition of the following Subparagraph:

"3.16.2 Representatives of the State Agencies shall have access at all reasonable times to the Work wherever it is in preparation or progress, and the Construction Manager shall provide proper facilities for such access and inspection."

O. PARAGRAPH 4.2.4 "COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION" is hereby supplemented by the additions of the following subparagraphs: Nothing contained herein shall prohibit the Owner's Representative from communicating directly with the Construction Manager for the purpose of receiving information and/or providing the Construction Manager with clarification as to Owner's position with regard to any matters affecting or concerning the Work.

4.2.4.1 The following definitions shall apply to construction communications:

4.2.4.1.1 Contract Document Clarifications: An answer from the Architect, in response to an inquiry from the Construction Manager, intended to make some

requirement(s) of the Drawings or plans clearly understood. Drawing/plan clarifications may be sketches, drawings, or in a narrative form and are not intended to change any requirements of the Contract Documents. Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.2 Non-Conformance Notice: A Notice issued by the Architect documenting that the Work or some portion thereof has not been performed in accordance with the requirements of the Contract Documents. Payment shall not be made on any portion of the Work for which a Non-Conformance Notice has been issued and the Work not corrected to the satisfaction of the Architect.

Upon receipt of a Non-Conformance Notice the Construction Manager shall provide a written Response to the Non-Conformance Notice within five (5) working days after receipt of the Notice. The Construction Manager's response shall state either (a) the basis of Construction Manager's determination that the Work was performed in accordance with the Contract Documents or (b) the corrective action Construction Manager intends to take, at its sole expense, to correct the non-conforming work

If the Construction Manager disputes issuance of the Notice the Architect has five (5) working days in which to respond by either (a) withdrawing the Notice of Non-Conformance or (b) directing the Construction Manager to correct the Work.

If directed to correct the Work, the Construction Manager shall do so within five (5) working days after receipt of such direction from the Architect, or such other time as may be agreed to with the Architect, without loss of rights for claim recovery or dispute resolution as may be available by the Contract.

4.2.4.1.3 Requests for Information: A written request from the Construction Manager or one of its subcontractors, to the Architect, seeking an interpretation or a clarification of some requirement of the Contract Documents. The Construction Manager shall clearly and concisely set forth the issue for which it seeks clarification or interpretation and why a response is needed from the Architect.

Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.4 Substitution/Or-Equal Submittals: A written request from the Construction Manager to substitute a material, article, device, product, fixture, form, type of construction, or process called for in the Contract Documents with another item that shall substantially equal in all respects to that so indicated or supplied. Each such request shall specifically set forth any manner in which the proposed change does not conform to the Contract Documents and Construction Manager (and any subcontractor initiating the request) warrants that the proposed substitute conforms in all respects with the contract documents except as specifically identified as non-conforming in the request.

4.2.4.1.5 Submittals/Shop Drawings: When required by any technical specification included in these Contract Documents, the Construction Manager shall transmit to the Architect technical submittals, shop drawings, or samples, including supporting catalog cuts, manufacturer's literature, sketches or drawings, calculations, and other pertinent, in sufficient detail to enable the Architect to review the information and determine that the Construction Manager clearly understands the requirements of the Contract Documents. Construction Manager (and any subcontractor initiating a submittal) warrants that all Work and materials depicted in technical submittals, shop drawings and samples shall conform in all respects to the requirements of the Contract Documents, except as otherwise specifically identified as non-conforming.

4.2.4.1.6 Schedule Submittals: When required by the Construction Schedule Specification of these Contract Documents, the Construction Manager shall submit required schedules, schedule updates, schedule revisions, time impact analysis, etc. for review.

P. INTENTIONALLY OMITTED

Q. SUBPARAGRAPH 4.3.7.2 is hereby revised (and paragraphs 4.3.73 and 4.3.7.4 are added) to read as follows:

4.3.7.2 Weather days: Construction Manager confirms that the Contract Time, Phased Contract Time and the agreed upon dates for same as set forth in Amendment No. 1 to this Agreement are reasonable periods to perform The Work. Construction Manager has included in the work schedule ordinary and normally anticipated lost days due to adverse weather ("weather days") and therefore Construction Manager shall not be entitled to an extension of the Contract Time or Phased Contract Time as a result of weather conditions normally experienced in the greater Santa Fe area unless (1) the Construction Manager is unable to make up for the weather delay by scheduling work for a Saturday in accordance with in 4.3.7.2 below, and (2) the number of weather days lost (and not made up by Saturday work) in that calendar month exceeds the number of weather days provided for in the Contract Time.

4.3.7.3 The Construction Manager's work schedule is based upon a regular five-day work week per calendar week. It is mutually agreed that in the event of a weather day the Construction Manager, before requesting a time extension the Construction Manager will first try to make up that weather day on the next Saturday available during the following 30 calendar days. A Saturday will be considered to be "available" only if all of the following conditions are met: (1) no work has already been scheduled for that day that would interfere with the work being rescheduled, (2) it is not a national holiday, (3) working on that Saturday is allowed by local ordinance, and (4) materials and workforce equivalent to what was scheduled for the lost weekday are available on that Saturday. The Construction Manager will only be required to utilize a Saturday if either (a) the Construction Manager incurs no additional cost in rescheduling work for that Saturday, or (b) the Owner agrees to compensate the Construction Manager (by Change Order) for any additional costs (such as for labor rate differential) the Construction Manager may incur.

4.3.7.4 The requirement stated above for the Construction Manager to utilize a Saturday to make up for a weather delay only applies the number of weather days included in each calendar month as indicated in the following list of Anticipated Lost Days. For every weather day beyond the number included below, the Construction Manager shall be entitled to an equivalent number of days extension to the Contract Time. The Construction Manager may (at the CM's sole discretion) attempt to mitigate the delay utilizing additional Saturdays as outlined in 4.3.7.3, but has not obligation to do so.

For the purposes of this Paragraph the table provided below setting forth the norms/anticipated lost weather days shall be utilized by the parties in determining lost weather days:

Month	Anticipated Lost Days Due to Adverse Weather
January	1
February	1
March	0
April	1
May	0
June	0
July	1
August	1
September	2
October	2
November	1
December	0

See the Exhibit D "Weather Delays" - attached to the Contract.

R. INTENTIONALLY OMITTED

S. SUBPARAGRAPH 4.6.8, add as new subparagraph :

"4.6.8 Limitations of Arbitration. Notwithstanding anything in the Contract Documents to the contrary, if (1) the Claims involve a proposed, net aggregate payment to owner or Construction Manager in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose an "interested person or entity" means any person or entity if (3) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (4) the interested person or entity is so situated that the disposition of the Claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as otherwise permitted by the Contract Documents or by law."

T. SUBPARAGRAPH 5.2.1, change "promptly" to "within 10 days" in lines 5 and 7.

U. PARAGRAPH 7.3 "CONSTRUCTION CHANGE DIRECTIVES"

Subparagraph 7.3.3.3 is hereby changed to read as follows:

7.3.3.3 The following fees apply to Changes to the Work;

7.3.3.3.1 INTENTIONALLY OMITTED

7.3.3.3.2 The same markup applied by the subcontractor in the subcontractors base subcontract, which shall be defined in said subcontract and subject to Owner's approval, to the cost of work performed by any subcontractor.

V. INTENTIONALLY OMITTED

W. INTENTIONALLY OMITTED

X. PARAGRAPH 9.8.1. of the General Conditions is hereby deleted in its entirety and the following is substituted in lieu thereof:

9.8.1 "Substantial Completion" of the Project shall be deemed to occur when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and, in addition, all requirements of the Contract Documents for Substantial Completion, including the following conditions, have been fulfilled as follows:

a. A Temporary of Final Certificate of Occupancy has been issued and all construction related approvals, licenses and requirements have been obtained or satisfied for the Project such that the Project may be operated for its intended use.

b. INTENTIONALLY OMITTED

Y. PARAGRAPH 9.8.2. of the General Conditions is hereby deleted in its entirety and the following Paragraphs 9.8.2.1. through 9.8.2.6. are substituted in lieu thereof:

9.8.2.1. When the Construction Manager considers that the Work, or portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Following receipt of the Construction Manager's list, the Architect will make an inspection (the "Initial Punch List Inspection") to determine whether the Work or designated portion thereof is Substantially Complete. Upon completion of its Initial Punch List Inspection, the Architect shall prepare and submit to the Construction Manager and the Owner the Architect's list (the "Punch List") of items to be completed or corrected. For the items on the Punch List, the Architect shall specify:

a. a date (a "Punch Item Date") by which such items shall be completed, which Punch Item Date shall be no more than forty-five (45) days from the date of the Punch List unless the Architect determines that reasonable cause exists for a later completion date; and

b. the cost to complete or correct the items as reasonably determined by the Architect.

The Architect shall expressly state on the Punch List what the Construction Manager must do to achieve Substantial Completion under Paragraph 9.8.1 of the General. If as a result of the Initial Punch List Inspection the Architect determines that Substantial Completion has occurred, the Architect shall prepare a Certificate of Substantial Completion pursuant to Paragraph 9.8.2.5 below.

9.8.2.2 If the Construction Manager has not given notice that the Work is substantially complete and requested inspection thereof on or before the date for Substantial Completion set by the parties in the Contract Documents, then the Owner may request the Architect to make an Initial Punch List Inspection of the Work to (x) prepare the Punch List pursuant to the provisions of Paragraph 9.8.2.1. above and (y) determine if Substantial Completion has occurred.

9.8.2.3. Upon the request of the Construction Manager prior to the expiration of the relevant Punch Item Date(s) and for good cause shown, the Architect may extend any Punch Item Date(s) for a reasonable period. Following receipt of the Punch List and the Construction Manager's compliance with the requirements of Paragraph 9.8.1. above, the Construction Manager may submit a request for another inspection by the Architect, if necessary, to determine whether Substantial Completion of the Work has been achieved.

9.8.2.4. If the Construction Manager fails to satisfactorily complete any item(s) on the Punch List by the applicable Punch Item Date(s), then the Owner has the right to take over the work in accordance with Section 2.4 of the General Conditions.

9.8.2.5.When the requirements of Paragraph 9.8.1. above have been met and upon the request of either the Owner or the Construction Manager, the Architect shall prepare a Certificate of Substantial Completion, in the form set out in Paragraph 9.8.3 below, which shall establish the date of Substantial Completion and shall establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise specifically stated in the Contract Documents or in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Construction Manager for their written acceptance of responsibilities assigned to them in such certificate.

Z. INTENTIONALLY OMITTED

AA. In addition to the provisions of Paragraph 9.10 Final Completion shall not have been deemed to have occurred until the date upon which all of the following have occurred:

a. INTENTIONALLY OMITTED

b. Delivery of conditional or unconditional lien waivers from each person who performed work at or provide or fabricated materials in connection with the Work (including all subcontracts executed in connection therewith), other than from those persons whose claims are being contested by Construction Manager in good faith and for which Construction Manager has provided to Owner a bond or security in an amount reasonably acceptable to Owner, and

c. Issuance and obtaining of a final, unconditional certificate of occupancy and all construction-related approvals, licenses, and requirements for the Project enabling it to be occupied and operated for its intended use.

BB. SUBPARAGRAPH 9.10.4.1, after "Claims" add: "previously made in writing and identified by Owner as unsettled at the time of final payment."

CC. Paragraph 10.1.1 add the following: "Construction Manager shall prepare and submit to Owner for Owner's approval a comprehensive safety program. Further, Construction Manager shall provide written verification and certification in a form satisfactory to the

Owner, that all subcontractors have familiarized themselves with the safety program and agreed to abide by said program and training regimen thereunder.

DD. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." In the first line of Subparagraph 11.1.1, following the work " companies," insert the following:

", acceptable to the Owner,."

EE. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." Add the following to subparagraph 11.1.3:

"Certificates called for herein shall be furnished in duplicate and shall specifically set forth evidence of all coverage required by 11.1.2 and the Construction Manager shall furnish to the Architect copies of all endorsements that are subsequently issued amending coverage or limits."

FF. SUBPARAGRAPH 13.4.3, add as a new subparagraph:

"In the event of any litigation between the parties, the prevailing party shall be entitled to reimbursements for all reasonable attorneys' fees, expert fees, court costs, and all other third-party costs of the litigation incurred by the prevailing party to the extent allowed by law."

GG. PARAGRAPH 13.5 "TESTS AND INSPECTIONS" is hereby supplemented by the addition of the following subparagraph:

"13.5.7 When work has been installed contrary to any Contract requirements and the Construction Manager requests the privilege of testing in lieu of removal, such testing shall be at the Construction Manager's expense."

HH. INTENTIONALLY OMITTED

II. Add the following new Article:

ARTICLE 15: REQUESTS FOR INFORMATION

15.1.1 In the event that the Construction Manager or its subcontractor, at any tier, determines that some portion of the Drawings, Specifications, or other Contract Documents requires clarification or interpretation by the Architect, the Construction Manager shall submit a Request for Information in writing to the Architect. Requests for Information may only be submitted by the Construction Manager and shall be only submitted on the Request for Information Forms provided by the Architect. The Construction Manager shall clearly and concisely set forth the issue for which clarification and interpretation is sought and why a response is needed from the Architect. If the Request for Information is being used to request confirmation of an interpretation or understanding of a requirement, the Construction Manager shall set forth that interpretation or understanding of the requirement along with reasons why such an understanding was reached.

15.1.2 The Architect will review all Requests for Information to determine whether they are Requests for Information within the meaning of this term. If the Architect determines

that the document is not a Request for Information, it will be returned to the Construction Manager, unreviewed as to content, for resubmittal on the proper form and in the proper manner. In either case, the Architect must reply to RFI in writing within the time requested by the Construction Manager, or three (3) working days, whichever is earlier.

15.1.3 Responses from the Architect are not intended to change any requirement of the Contract Documents. In the event the Construction Manager believes that a response to a Request for Information will cause a change to the requirements of the Contract Document, the Construction Manager shall immediately give written notice to the Architect in accordance with Section 4 of the General Conditions stating that the Construction Manager considers the response to be a change in the scope of work or a change to the project schedule..

END OF SUPPLEMENTARY CONDITIONS

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit "C"

Weather Delays

1. A "Work Day" is defined at Monday thru Friday, 7:30 am– 4:400 pm.

2. The occurrence of one or more of the following will constitute a weather delay as indicated:

   a. 0.25" of rain during the workday constitutes one lost workday
   b. 2.0" of snow during the workday constitutes one lost workday
   c. 12" of snow in a 24-hour period constitutes two lost workdays.
   d. Temperature of 5 degrees below zero (Fahrenheit) constitutes one lost workday.
   e. Any drying time required for soil stabilization (as directed by the geotechnical engineer) due to rain or snow will constitute lost work day(s).

3. Weather days will be included in the final schedule approved as part of the GMP proposal to be incorporated into the contract by amendment. The number of weather days included will be in accordance with Section 3.P of Exhibit B. Adjustments to the contract completion dates due to adverse weather will be made in accordance with Section 3.P of Exhibit B.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit "D"
Personnel Billing Rates

Position	Reimbursable as a Cost of the Work (w/in GMP)	Included In Fee	Notes	Expected to be Full or Part Time	Billing Rate ($/hr)
Field Staff Stationed on Site					
Superintendent	X		1	Full	$70
Project Engineer, QA/QC	X		1	Full	$60
Carpenter	X		2	Full	Varies - local rate
Laborer	X		2	Full	Varies - local rate
Personnel Not Stationed on Site					
Vice President		X			
CFO		X			
Project Manager	X		3	Part	$75
General Superintendent	X		3	Part	$75
Project Coordinator		X			
Safety Director	X		3	Part	$50
Project Accountant		X			
Pre-Construction Personnel					
Senior Estimator/Pre-Con Services M	X		4	Part	$90
Assistant Estimator	X		4	Part	$60

Notes:

1 Field staff on project site.
2 It is expected that all trade work will be subcontracted. Trade labor rates shown only if need for Gen Conditions.
3 Billed only for time spent on site and traveling to project
4 Billed only for time during pre-construction phase, subject to Pre-construction services billing cap (see Exhibit F).

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit E
Project Scope & Budget Summary

- The Scope of the project includes:
  - 40 Single-story Condominium living units
  - 80 Single-level Independent Living units built in a series of two-story buildings
  - 26 Assisted Living apartments (and related support spaces) constructed on the 2nd level of the central services building
  - Central services building (El Centro) containing commercial kitchen, dinning spaces, activity spaces, administrative and marketing offices, retail spaces, and a spa/wellness center.
  - ~~13 acres of site development, with some off-site, public improvements~~
  - Total building area is approximately 183,000 sf.

- Based on a preliminary site plan and building design commissioned by the Owner, the Construction Manager prepared a detailed, preliminary cost report and presented that report to the Owner on February 1, 2004. Based on that scope and cost report, the Owner has established a construction budget of $20,540,000, based on the Preliminary Divisional Cost Breakdown shown in Exhibit F.
- The Owner has contracted with the Architect to complete the design of the project in accordance with the budget stated above. The completion of the design, and related activities is proceeding in accordance with the Preconstruction Phase Schedule prepared and updated regularly by the Construction Manager. See Exhibit G.

- The Construction Manager has also prepared a Preliminary Construction Schedule. See Exhibit H. A final Construction Schedule will be included in the GMP report and made part of the contract by amendment.

- The Owner, Architect and Construction Manager are working together to monitor the completion of the design to ensure meeting the Construction Budget.

- Upon receipt of the Design Development documents, the Construction Manager will, in accordance with contract Section 2.2 prepare a GMP report that will include all of the elements outlined in Section 2.2.4. Prior to submitting the final GMP report, the Construction Manager will review the preliminary cost estimates with the Owner and Architect to determine if any adjustments to scope are required in order to achieve the construction budget stated above. Upon approval by the Owner, the GMP will be incorporated into the contract by amendment, in accordance with Section 2.2.

- During the completion of the design The Construction Manager will continue to meet regularly with the Owner and Architect, and will regularly review the Architect's work in progress to monitor the design as a means to ensure conformance to the construction budget.

RainbowVision Santa Fe/Weis Contract Agreement
EXHIBIT F

Preliminary Divisional Cost Breakdown

C.S.I. SYSTEMS BREAKDOWN		Total Costs	%
Division 1 - General Conditions		$1,047,401	5.9%
Division 1 - Building Permit Allowance		$184,620	1.0%
Division 2 - Site Construction		$1,534,319	8.7%
Division 3 - Concrete		$965,149	5.5%
Division 4 - Masonry		$488,508	2.8%
Division 5 - Metals		$439,822	2.5%
Division 6 - Woods & Plastics		$2,609,476	14.8%
Division 7 - Thermal & Moisture Protection		$969,353	5.5%
Division 8 - Doors & Windows		$771,105	4.4%
Division 9 - Finishes		$3,286,198	18.6%
Division 10 - Specialties		$592,969	3.4%
Division 11 - Equipment (See Note 1)		$445,320	2.5%
Division 12 - Furnishings (See Note 2)		$49,196	0.3%
Division 14 - Conveying		$230,919	1.3%
Division 15 - Mechanical		$2,410,820	13.7%
Division 16 - Electrical		$1,636,100	9.3%
Sub-Total		$17,661,276	100%
Escalation - For 2004	0.0%	-	
Sub-Total		$17,661,276	
Est./Const Contingency - El Centro	5.0%	$243,521	
Est./Const Contingency - Balance	3.0%	$383,726	
Sub-Total		$18,288,523	
Builders Risk Insurance	0.8%	$146,308	
Liability Insurance	0.85%	$156,696	
		$18,591,527	
Construction Manager Fee	3.00%	$557,748	
Sub-Total		$19,149,273	
Performance and Payment Bond		$106,393	
NM Gross Receipts Tax		$1,284,062	
Project Totals		**$20,539,728**	

Notes:

1. "Equipment" includes residential appliances, commerical kitchen and laundry equipment.
2. "Furnishings" does not include FF&E - which is being designed and purchased by the Owner under a separate contract.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit G
Preconstruction Phase Schedule

Refer to the "Preconstruction Schedule" dated _____ (filename: RVSF007), attached separately but made a part of this Exhibit by reference.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit H
Preliminary Construction Phase Schedule

Refer to the "Preliminary Construction Schedule" dated _____ (filename: _____), attached separately but made a part of this Exhibit by reference.

Amendment No. 1
(Revised December 15, 2004)
To Contract Agreement Between
RainbowVision Santa Fe, LLC and Weis Builders, Inc

In accordance with article 2.2.9 of the Contract Agreement, the Guaranteed Maximum Price (GMP) and Project Schedule are hereby modified to reflect the following:

- The Guaranteed Maximum Price will be Twenty-One Million Five Hundred Thirty Nine Thousand, Seven Hundred Twenty-Eight Dollars ($21,539,728).

- The Construction Start date will be January 3, 2005. Based on that start date:
- The Substantial Completion date for Buildings 16, 17, 18, 19, and 20 will be October 28, 2005.
- The Substantial Completion date for the balance of the project will be April 26, 2006.

Accordingly, the GMP Divisional Cost Breakdown (Exhibit F) shall be modified as per the attached revision, dated September 30, 2004. The revised GMP is based on the following:

- Weis September 15, 2004 "Confirmation of GMP" letter (with attachments)
- Weis September 30, 2004 "Summary of Approved Enhancements"

The Construction Schedule (Exhibit H) shall be as shown in the attached update, dated December 15, 2004.

For:
RainbowVision Santa Fe, LLC

(Signature)

JOY SILVER, PRESIDENT
(Printed Name and Title)
RAINBOWVISION PROPERTIES, INC
MANAGING MEMBER

(Date)

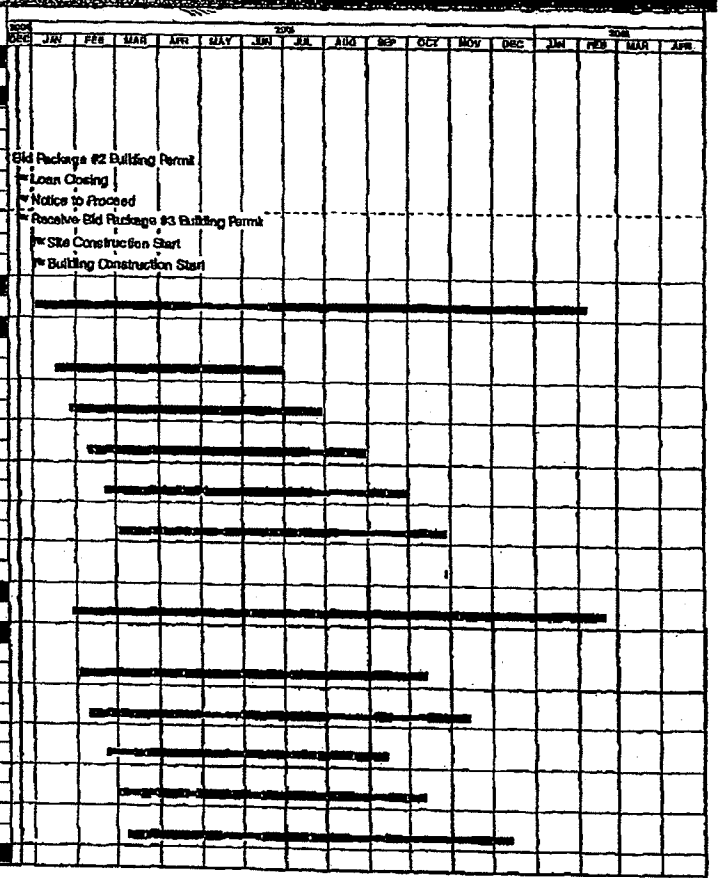
For:
Weis Builders Inc.

(Signature)

PETER WORTHINGTON, VICE PRESIDENT
(Printed Name and Title)

DEC-15, 2004
(Date)

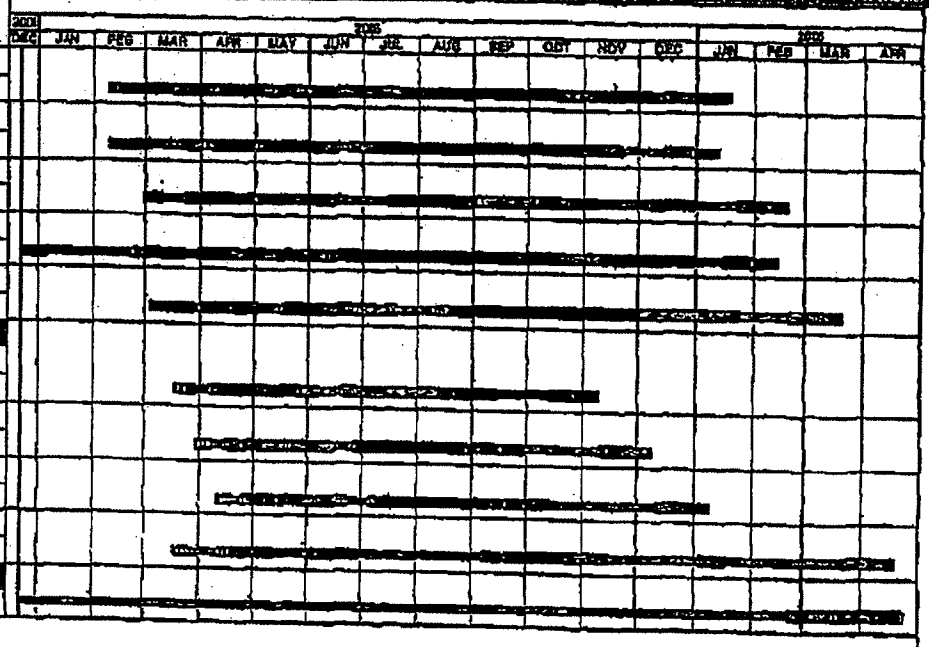
Act ID	Description	Dur	Early Start	Early Finish
Procurement				
1060	Receive Utilities Permit	0	05AUG04 A	
1120	Receive Grading Permit	0	05AUG04 A	
1080	Receive Bid Package #2 Building Permit	0	02NOV04 A	
1000	Loan Closing	0	22DEC04	
1005	Notice to Proceed	0	22DEC04	
1100	Receive Bid Package #3 Building Permit	0	22DEC04	
1010	Site Construction Start	0	03JAN05	
1020	Building Construction Start	0	03JAN05	
Sitework				
		285	03JAN05	06FEB06
Condominium Buildings Group 1 - North East				
+Condominium Building 20				
		117	18JAN05	29JUN05
+Condominium Building 18				
		130	28JAN05	29JUL05
+Condominium Building 19				
		144	09FEB05	30AUG05
+Condominium Building 17				
		158	21FEB05	28SEP05
+Condominium Building 16				
		171	03MAR05	28OCT05
+Closeout/Turnover Group 1 Condominiums				
		0	28OCT05	28OCT05
Clubhouse				
		275	28JAN05	20FEB06
Buildings Group 2 - South East				
+Independent Living Building 1 - 8 Units				
		180	03FEB05	13OCT05
+Independent Living Building 2 - 4 Units				
		196	09FEB05	14NOV05
+Condominium Building 3				
		147	21FEB05	14SEP05
+Condominium Building 4				
		159	03MAR05	12OCT05
+Independent Living Building 5 - 4 Units				
		201	08MAR05	14DEC05
Buildings Group 3 - South West				



Early bar
Progress bar
Start milestone point
Finish milestone pgh

Rainbow Vision Retirement Community
Santa Fe, New Mexico
Wels Builders, Inc.

Act ID	Description	Dur	Early Start	Early Finish
	+Independent Living Building 6 - 14 Units			
		247	09FEB05	20JAN06
	+Independent Living Building 7 - 10 Units			
		242	09FEB05	13JAN06
	+Independent Living Building 8 - 8 Units			
		256	28FEB05	20FEB06
	+Independent Living Building 9 - 14 Units			
		299	22DEC04	14FEB06
	+Independent Living Building 10 - 10 Units			
		272	04MAR05	21MAR06
	Buildings Group 4 - North West			
	+Condominium Building 15			
		169	18MAR05	10NOV05
	+Condominium Building 14			
		182	30MAR05	09DEC05
	+Condominium Building 12			
		195	11APR05	09JAN06
	+Independent Living Building 11 - 4 Units			
		283	18MAR05	19APR06
	+Closeout			
		348	22DEC04	24APR06



Early bar
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Finish milestone point

Rainbow Vision Retirement Community
Santa Fe, New Mexico
Weis Builders, Inc.

EXHIBIT 2

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

NO. D-0101-CV 02007-000010

ENDORSED
First Judicial District Court
FEB -6 2007
Santa Fe, Los Alamos & Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

RAINBOWVISION SANTA FE, LLC,

Plaintiff,

vs.

WEIS BUILDERS, INC.,
PCI CONTRACTORS, INC. and RLA, INC.
Defendants.

FIRST AMENDED PETITION TO CANCEL LIENS AND COMPLAINT TO RECOVER DAMAGES

The plaintiff RainbowVision Santa Fe, LLC ("RainbowVision"), by and through its undersigned attorneys, states its First Amended Petition to Cancel Liens and Complaint to Recover Damages as follows:

GENERAL ALLEGATIONS

1. RainbowVision is a New Mexico limited liability company with its principal place of business located in Santa Fe, New Mexico.

2. The defendant Weis Builders, Inc. ("Weiss"), is, upon information and belief, a Minnesota corporation.

3. The defendant PCI Contractors, Inc. ("PCI"), is a New Mexico corporation with its principal place of business located in Santa Fe, New Mexico.

4. The defendant RLA, Inc. ("RLA"), is a New Mexico corporation with its principal place of business located in Bernalillo County, New Mexico.

5. The real property which is the subject of this action is a 12.7 acre tract located at 500 Rodeo Road in Santa Fe County, New Mexico (the "Property"). The Property is a

condominium created pursuant to the provision of the New Mexico Condominium Act.

6. On April 28, 2004, RainbowVision and Weiss entered into a contract ("Contract") under which Weis agreed to construct certain improvements upon the Property, including residential condominium units, residential assisted living units and various related structures and improvements. A true and correct copy of the Contract, marked as Exhibit A, is being served with this pleading pursuant to Rule 1-009(I) NMRA.

7. Coincident with the execution of the Contract, Weiss, as bond obligor, and Federal Insurance Company ("Federal"), as surety, executed and delivered a Payment Bond to RainbowVision. Pursuant to the terms of the Payment Bond, Weiss and Federal agreed, among other things, to indemnify and hold RainbowVision harmless from any claims of lien for the payment for labor and materials furnished in the performance of the Contract. A true and correct copy of the Payment Bond, marked as Exhibit B, is being served with this pleading pursuant to Rule 1-009(I) NMRA.

8. Upon information and belief, Weiss entered into a subcontract with PCI under which PCI agreed to furnish certain labor and materials in connection with the work which Weis agreed to perform under the Contract.

9. Upon information and belief, Weis entered into a subcontract with RLA under which RLA agreed to furnish certain labor and materials in connection with the work which Weiss agreed to perform under the Contract.

10. Pursuant to the Contract and the New Mexico Retainage Act, an escrow account was established at Los Alamos National Bank into which funds retained from payments to Weis under the Contract are held pending completion of the work required under the Contract, and compliance with the terms and conditions of the Contract. The balance of the escrow account as

of December 31, 2006, were approximately $1,143,458.00.

COUNT I
PETITION TO CANCEL PCI'S CLAIM OF LIEN

11. RainbowVision incorporates the General Allegations by reference as though set forth herein.

12. On December 12, 2006, PCI recorded a Claim of Lien upon the Property. As stated in PCI's Claim of Lien, PCI claims it is owed $73,843.00 for work performed on the Property pursuant to its subcontract with Weis. A true and correct copy of the PCI's Claim of Lien, marked as Exhibit C, is being served with this pleading pursuant to Rule 1-009(I) NMRA.

13. Upon information and belief, the amounts claimed by PCI consist of retainage withheld by Weiss from payments previously made to PCI.

14. Pursuant to NMSA § 48-2-9(B) (1978), RainbowVision requests that the Court examine the Claim of Lien filed by PCI and determine an amount to satisfy the recorded demand and any other damages, court costs or attorney's fees which may be recovered by PCI. RainbowVision believes that amount is no greater than one-hundred fifty percent of the recorded demand of $73,840.00.

15. Pursuant to NMSA § 48-2-9(B) (1978), RainbowVision requests the Court approve security consisting of the Payment Bond and the $73,840.00 of the retainage amount.

WHEREFORE, RainbowVision requests the Court enter an Order canceling PCI's Claim of Lien pursuant to NMSA § 48-2-9(B) (1978), and that the Court grant such other and further relief as is just and proper.

COUNT II
PETITION TO CANCEL RLA'S CLAIM OF LIEN

16. RainbowVision incorporates the General Allegations by reference as though set

forth herein.

17. On November 14, 2006, RLA recorded a Claim of Lien upon the Property. As stated in RLA's Claim of Lien, RLA claims it is owed $36,952.43 for work performed on the Property pursuant to its subcontract with Weis. A true and correct copy of the RLA's Claim of Lien, marked as Exhibit D, is being served with this pleading pursuant to Rule 1-009(I) NMRA.

18. Upon information and belief, RainbowVision has paid Weiss the amounts claimed by RLA.

19. Pursuant to NMSA § 48-2-9(B) (1978), RainbowVision requests that the Court examine the Claim of Lien filed by RLA and determine an amount to satisfy the recorded demand and any other damages, court costs or attorney's fees which may be recovered by RLA. RainbowVision believes that amount is no greater than one-hundred fifty percent of the recorded demand of $36,952.43.

20. Pursuant to NMSA § 48-2-9(B) (1978), RainbowVision requests the Court approve security consisting of the Payment Bond and the $36,952.43 of the retainage amount.

WHEREFORE, RainbowVision requests the Court enter an Order canceling RLA's Claim of Lien pursuant to NMSA § 48-2-9(B) (1978), and that the Court grant such other and further relief as is just and proper.

COUNT III
PETITION TO CANCEL WEIS'S CLAIM OF LIEN

21. RainbowVision incorporates the General Allegations by reference as though set forth herein.

22. On February 2, 2007, Weis recorded a Claim of Lien upon the Property, or some portion thereof. As stated in Weis's Claim of Lien, Weis claims it is owed $1,522,319.00 for

work performed on the Property pursuant to the Contract. A true and correct copy of Weis's Claim of Lien, marked as Exhibit E, is being served with this pleading pursuant to Rule 1-009(I) NMRA.

23. Weis's Claim of Lien is defective because, among other things, it is untimely and does not accurately state the amount of the claim after deducting all just credits and offsets due to Rainbow Vision.

24. Pursuant to NMSA § 48-2-9(B) (1978), RainbowVision requests that the Court examine Weis's Claim of Lien, and determine an amount to satisfy the recorded demand and any other damages, court costs or attorney's fees which may be recovered by Weis.

25. Pursuant to NMSA § 48-2-9(B) (1978), RainbowVision requests the Court approve security consisting of the amount of retainage in the escrow account at Los Alamos National Bank to serve as security for the payment of Weis's Claim of Lien.

WHEREFORE, RainbowVision requests the Court enter an Order canceling Weis's Claim of Lien pursuant to NMSA § 48-2-9(B) (1978), and that the Court grant such other and further relief as is just and proper.

COUNT IV
BREACH OF CONTRACT

26. RainbowVision incorporates the General Allegations, and the allegations of Counts I, II and III, by reference as though set forth herein.

27. Weis has breached the Contract in numerous respects, including, but not limited to, the following:

A. Failing to achieve substantial completion of the Contract within the times specified in the Contract.

B. Failing to complete the work required under the Contract in a workmanlike manner.

C. Failing to manage and supervise the work under the Contract in an appropriate manner;

D. Refusing to remedy defective work, and failing to honor its warranty obligations under the Contract;

E. Failing to promptly discharge liens filed by third-parties upon the Property; and

F. Billing RainbowVision for items not properly billed under the Contract.

27. As a direct and proximate result of Weis's numerous breaches of the Contract, RainbowVision has suffered damages, including, but not limited to, increased construction administration costs, the costs to remedy defective work, the costs to secure the release of liens upon the Property, including attorneys' fees, and liquidated damages as provided in the Contract.

28. Pursuant to the terms of the Contract Weis is liable for reasonable attorneys' fees and costs incurred by RainbowVision in connection with this lawsuit.

29. RainbowVision has satisfied all conditions precedent to maintaining this action.

WHEREFORE, RainbowVision requests an award of compensatory damages in an amount to be determined at trial, an award of liquidated damages pursuant to the terms of the Contract, its attorneys' fees and costs incurred in connection with this matter, and such other and further relief as the Court deems proper.

COUNT V
MISREPRESENTATION

30. RainbowVision incorporates the General Allegations, and the allegations of

Counts I through IV, by reference as though set forth in detail here.

31. Weis purchased Subconractor Default Insurance from Universal International Reinsurance Company Limited under which Weis is the insured.

32. Weis submitted pay applications to RainbowVision's architect which included premium charges for the Subcontractor Default Insurance, without disclosing those charges.

33. Weis either negligently or intentionally failed to disclose to RainbowVision that its pay applications included premium charges for Subcontractor Default Insurance.

34. RainbowVision approved pay applications, which included premium charges for Subcontractor Default Insurance.

35. RainbowVision has no obligation under the Contract to pay premium charges for Subcontractor Default Insurance, and would not have approved pay applications containing such charges had Weis properly disclosed that the pay applications included those charges.

36. As a direct and proximate result of Weis's failure to disclose that its pay applications included premium charges for Subcontractor Default Insurance, RainbowVision has suffered damages, including the amount of those premium charges paid to date.

WHEREFORE, RainbowVision requests an award of compensatory damages in an amount to be determined at trial, an award of punitive damages if the failure to disclose was intentional, and such other and further relief as the Court deems proper.

COUNT VI
UNFAIR PRACTICES

37. RainbowVision incorporates the General Allegations, and the allegations of Counts I through V, by reference as though set forth in detail here.

38. Weis knowingly submitted pay applications to RainbowVision, in connection

with its provision of goods and services to RainbowVision, which included premium charges for Subcontractor Default Insurance.

39. Weis's failure to disclose that its pay applications included premium charges for Subcontractor Default Insurance deceived or tended to deceive RainbowVision, and constituted an unfair practice under the New Mexico Unfair Practices Act.

40. As a direct and proximate result of Weis's failure to disclose that its pay applications included premium charges for Subcontractor Default Insurance, RainbowVision has suffered damages, including the amount of those premium charges paid to date.

WHEREFORE, RainbowVision requests an award of compensatory damages in an amount to be proven at trial, an appropriate award of treble damages pursuant to Section 57-12-10(B) NMSA 1978, an award of attorneys' fees pursuant to Section 57-12-10(C) NMSA 1978, and such other and further relief as the court deems appropriate.

COUNT VII
DECLARATORY JUDGMENT

41. RainbowVision incorporates the General Allegations, and the allegations of Counts I through VI, by reference as though set forth herein.

42. Pursuant to paragraph 5.4.2 of Exhibit A to the Contract, Weis is obligated to achieve substantial completion of each phase of the work under the Contract by the dates specified in Amendment No. 1 to the Contract.

43. Pursuant to paragraph 5.4.2 of Exhibit A to the Contract, Weis is obligated to pay liquidated damages to RainbowVision for each date beyond the substantial completion date specified in the contract that Weis has not achieved substantial completion.

44. Pursuant to paragraph 5.4.2 of Exhibit A to the Contract, RainbowVision is

entitled to collect the liquidated damages owed under the Contract, by withholding them from payments due to Weis, including the final payment of retainage due under the Contract.

45. Upon information and belief, there is a dispute, appropriate for judicial declaration, between RainbowVision and Weis regarding the following matters:

A. Whether Weis is liable for liquidated damages under the Contract, and, if so, the amount;

B. Whether RainbowVision is entitled to withhold liquidated damages from the retainage held in the escrow account at Los Alamos National Bank.

WHEREFORE, RainbowVision requests the Court enter a declaratory judgment declaring the extent of Weis's liability for liquidated damages, declaring that RainbowVision is entitled to withhold liquidated damages from the retainage held in the escrow account at Los Alamos National Bank, and granting such other and further relief as the court deems appropriate.

COUNT VIII
SLANDER OF TITLE

46. RainbowVision incorporates the General Allegations, and the allegations of Counts I through VII, by reference as though set forth herein.

47. Weis, intentionally and without privilege or justification, recorded Weis's Claim of Lien without deducting amount for credits and offsets due to RainbowVision, including, but not limited to, offsets for liquidated damages, payments by RainbowVision for repairs undertaken by RainbowVision, and payments to subcontractors made by RainbowVision.

48. Upon information and belief, Weis's Claim of Lien purports to encumber property which it has previously released, or which it is not entitled to lien.

49. Weis's filing of its Claim of Lien caused a cloud upon the title of the Property,

and is a slander of the title of the Property.

50. As a direct and proximate result of Weis's slander of the title of the Property, RainbowVision has suffered damages, including, but not limited to, the costs and attorneys' fees it will incur in removing the cloud upon the title.

WHEREFORE, RainbowVision requests an award of compensatory damages in an amount to be proven at trial, an award of punitive damages, and such other and further relief as the court deems appropriate.

Respectfully submitted,
SOMMER, UDALL, HARDWICK,
AHERN & HYATT, LLP
Attorneys for RainbowVision Santa Fe, LLC

By: _____

Jack N. Hardwick
P.O. Box 1984
Santa Fe, NM 87504-1984
(505) 982-4676

Certificate of Service

I certify that a copy of the foregoing was mailed to Ronald J. Van Amberg, P.O. Box 1447, Santa Fe, NM 87504-1447, and to Murray N. Thayer, 2021 Mountain Road, N.W., Albuquerque, NM 87104-1444 on this ~~6th~~ 16th day of February 2007.

_____
Jack N. Hardwick

EXHIBIT 3

3/23/07

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

ENDORSED
First Judicial District Court

MAR 27 2007

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

RAINBOWVISION SANTA FE, LLC,

Plaintiff,

vs.

NO. D-0101-CV 2007-00010

WEIS BUILDERS, INC.,
PCI CONTRACTORS, INC., and RLA, INC.

Defendants.

and

WEIS BUILDERS, INC.

Third Party Plaintiff,

vs.

HSH NORDBANK AG,
SIMS RAINBOWVISION LLC,
LOS ALAMOS NATIONAL BANK,
VALLEY NATIONAL BANK, and
LES FILE DRYWALL, INC.,

Third Party Defendants.

THIRD PARTY COMPLAINT

Weis Builders Inc. ("WBI) as Third Party Plaintiff, makes this Third Party Complaint.

1. WBI is a Minnesota corporation duly and validly licensed in the State of New Mexico.

2. HSH Nordbank AG is a lending institution located in New York, NY.

3. Los Alamos National Bank is a banking institution in Los Alamos, New Mexico organized and existing under the laws of the United States of America.

3/27/07

4. Valley National Bank is a banking institution in Espanola, New Mexico organized and existing under the laws of the United States of America.

5. Les File Drywall is a New Mexico corporation with its principal place of business in Albuquerque, New Mexico.

6. On or about April 28, 2004, WBI and RainbowVision Santa Fe, LLC ("RVSF") entered into a contract under which WBI agreed to provide certain construction services, labor, and materials for work specified in the contract (the "Contract") for the RainbowVision Santa Fe Retirement Community (the "Project"), in Santa Fe, New Mexico, in return for compensation for its services. A true and correct copy of the Contract is being served with this pleading as Exhibit 1 pursuant to Rule 1-009(I) NMRA.

7. RVSF has improperly withheld payment from WBI.

8. RVSF has not paid the retainage to WBI.

9. An unpaid balance of at least $1,522,319, which includes, among other things, the unpaid Contract balance (including retainage) and additional contract adjustments is currently owed to WBI for the reasonable value of its improvements to the Property, together with interest, costs, disbursements, and reasonable attorneys' fees.

10. On or about February 2, 2007, WBI filed a Claim of Lien in the sum of $1,522,319.00, plus legal fees, costs, and interest upon the Property for amounts owed WBI for its improvements to the Property), which Claim of Lien was recorded as Instrument #1469461 in the records of Santa Fe County. A true and correct copy of WBI's Claim of Lien is being served with this pleading as Exhibit 2 pursuant to Rule 1-009(I) NMRA.

11. The Project is located on real property located at 500 Rodeo Road, Santa Fe New Mexico (the "Property") and more particularly described as:

> That certain tract of land within Section 11, Township 16 North, Range 9 East, NMPM per plat 605/24 bearing uniform property code number 1-053-095-353-509

12. WBI specifically excepts from its Claim of Lien the following condominiums:

Unit 110, Instrument No. 1437694, records of Santa Fe County, New Mexico.
Unit 111, Instrument No. 1431907, records of Santa Fe County, New Mexico.
Unit 112, Instrument No. 1431358, records of Santa Fe County, New Mexico.
Unit 113, Instrument No. 1431744, records of Santa Fe County, New Mexico.
Unit 120, Instrument No. 1438953, records of Santa Fe County, New Mexico.
Unit 121, Instrument No. 1432827, records of Santa Fe County, New Mexico.
Unit 122, Instrument No. 1431782, records of Santa Fe County, New Mexico.
Unit 123, Instrument No. 1431910, records of Santa Fe County, New Mexico.
Unit 210, Instrument No. 1434135, records of Santa Fe County, New Mexico.
Unit 211, Instrument No. 1440074, records of Santa Fe County, New Mexico.
Unit 220, Instrument No. 1434302, records of Santa Fe County, New Mexico.
Unit 221, Instrument No. 1432831, records of Santa Fe County, New Mexico.
Unit 310, Instrument No. 1433860, records of Santa Fe County, New Mexico.
Unit 311, Instrument No. 1431746, records of Santa Fe County, New Mexico.
Unit 312, Instrument No. 1432634, records of Santa Fe County, New Mexico.
Unit 313, Instrument No. 1432625, records of Santa Fe County, New Mexico.
Unit 111, Instrument No. 1431907, records of Santa Fe County, New Mexico.
Unit 410, Instrument No. 1434300, records of Santa Fe County, New Mexico.
Unit 411, Instrument No. 1431909, records of Santa Fe County, New Mexico.
Unit 412, Instrument No. 1431357, records of Santa Fe County, New Mexico.
Unit 413, Instrument No. 1432007, records of Santa Fe County, New Mexico.
Unit 510, Instrument No. 1433009, records of Santa Fe County, New Mexico.
Unit 511, Instrument No. 1431899, records of Santa Fe County, New Mexico.
Unit 521, Instrument No. 1431361, records of Santa Fe County, New Mexico.
Unit 1110, Instrument No. 1433094, records of Santa Fe County, New Mexico.
Unit 1111, Instrument No. 1435053, records of Santa Fe County, New Mexico.
Unit 1120, Instrument No. 1438955, records of Santa Fe County, New Mexico.
Unit 1121, Instrument No. 1432829, records of Santa Fe County, New Mexico.
Unit 1210, Instrument No. 1431658, records of Santa Fe County, New Mexico.
Unit 1211, Instrument No. 1432825, records of Santa Fe County, New Mexico.
Unit 1213, Instrument No. 1434137, records of Santa Fe County, New Mexico.
Unit 1410, Instrument No. 1431748, records of Santa Fe County, New Mexico.
Unit 1412, Instrument No. 1434459, records of Santa Fe County, New Mexico.
Unit 1511, Instrument No. 1431362, records of Santa Fe County, New Mexico.
Unit 1512, Instrument No. 1434580, records of Santa Fe County, New Mexico.
Unit 1610, Instrument No. 1406282, records of Santa Fe County, New Mexico.
Unit 1611, Instrument No. 1405660, records of Santa Fe County, New Mexico.
Unit 1612, Instrument No. 1405424, records of Santa Fe County, New Mexico.
Unit 1613, Instrument No. 1405423, records of Santa Fe County, New Mexico.
Unit 1710, Instrument No. 1405659, records of Santa Fe County, New Mexico.

Unit 1711, Instrument No. 1406128, records of Santa Fe County, New Mexico.
Unit 1712, Instrument No. 1405655, records of Santa Fe County, New Mexico.
Unit 1713, Instrument No. 1406704, records of Santa Fe County, New Mexico.
Unit 1810, Instrument No. 1405428, records of Santa Fe County, New Mexico.
Unit 1811, Instrument No. 1405906, records of Santa Fe County, New Mexico.
Unit 1812, Instrument No. 1405564, records of Santa Fe County, New Mexico.
Unit 1813, Instrument No. 1405565, records of Santa Fe County, New Mexico.
Unit 1911, Instrument No. 1406812, records of Santa Fe County, New Mexico.
Unit 1912, Instrument No. 1405657, records of Santa Fe County, New Mexico.
Unit 1913, Instrument No. 1420278, records of Santa Fe County, New Mexico.
Unit 2010, Instrument No. 1405566, records of Santa Fe County, New Mexico.
Unit 2011, Instrument No. 1405190, records of Santa Fe County, New Mexico.
Unit 2012, Instrument No. 1405557, records of Santa Fe County, New Mexico.
Unit 2013, Instrument No. 1405530, records of Santa Fe County, New Mexico.

13. HSH Nordbank AG claims or may claim an interest in the Property subject to the Claim of Lien by virtue of the Real Estate Mortgage with Assignment of Rents and Security Agreement and Fixture Filing recorded with the Santa Fe County Clerk December 21, 2004 as document number 1359754 and by virtue of UCC filings with the Santa Fe County Clerk December 21, 2004, as document number 1359845.

14. Los Alamos National Bank claims or may claim an interest in the Property subject to the Claim of Lien by virtue of the Line of Credit Mortgage recorded with the Santa Fe County Clerk on January 5, 2004 as document numbered 1308585 and Mortgage Modification Agreement recorded with the Santa Fe County Clerk on July 30, 2004, as document 1339736 and by virtue of the Real Estate Mortgage with Assignment of Rents and Security Agreement and Fixture Filing recorded with the Santa Fe County Clerk December 21, 2004 as document number 1359845.

15. Sims Rainbowvision LLC claims or may claim an interest in the Property subject to the Claim of Lien by virtue of the Real Estate Mortgage with Assignment of Rents and Security Agreement and Fixture Filing recorded with the Santa Fe County Clerk December 21, 2004 as document number 1359845.

16. Los Alamos National Bank and Valley National Bank jointly claim or may claim an interest in the Property by virtue of the Mortgage recorded with the Santa Fe County Clerk on January 31, 2007 as document number 14690069 and by virtue of the Assignment of Leases and Rents recorded with the Santa Fe County Clerk on January 31, 2007 as document number 14690069.

17. Les File Drywall, Inc. claims or may claim an interest in the Property by virtue of the Claim of Lien recorded with the Santa Fe County Clerk on February 23, 2007, as document number 1472023.

18. All of the Third Party Defendants are subject to the jurisdiction and venue of the Court by virtue of their interests in real property within the County of Santa Fe.

WHEREFORE, Weis Builders, Inc. respectfully requests the Court to enter judgment as follows:

a. That the Claim of Lien of WBI be adjudged a proper lien on the Property for the amounts set forth above and that it be adjudged paramount and superior to the interest of any others and the same be foreclosed.

b. That any other persons claiming, by through or under them be barred and forever foreclosed of all right, interest, or claim in or to the Property.

c. That the Property be sold under the direction of the Court by a Special Master appointed for such purpose and the proceeds of such sale be applied in the priority provided in the WBI's Claim of Lien and according to law, and the excess, if any, of the proceeds of the sale over the amount due to WBI, after inclusion of costs of sale including Special Master's fees, be distributed according to law and the further order of the Court.

d. That WBI be given the right to become a purchaser at the sale, and that the purchaser at the sale be let into possession of the Property.

e. That WBI have a deficiency judgment for the amount of any deficiency, if the proceeds of such sale are not sufficient to satisfy the amount due and owing WBI as set forth above.

f. That WBI have judgment for all costs expended herein until the time of sale, including costs of sale of the Property pursuant to judgment of foreclosure, and such other and further relief as the Court may deem just and proper.

g. As part of any judgment or order in favor of WBI, an award to WBI of its costs, disbursements, and attorneys' fees; and

h. Any such other legal or equitable relief as the Court deems just.

Dated: March 23, 2007

Respectfully submitted,

CALVERT MENICUCCI P.C.

By: Carl A. Calvert

Carl A. Calvert
8900 Washington St., N.E., Suite A
Albuquerque, NM 87113
(505) 247-9100

-and-

FABYANSKE, WESTRA, HART, & THOMSON, P.A.

Dean B. Thomson (MN ID #141045)
Pro Hac Vice
Kristine Kroenke (MN ID #336294)
Pro Hac Vice
800 LaSalle Avenue, Suite 1900
Minneapolis, MN 55402
(612-359-7600)

ATTORNEYS FOR THE DEFENDANT AND COUNTERCLAIMANT WEIS

Certificate of Service

I certify that a copy of the foregoing was mailed to

Jack N. Hardwick, Esq.
Sommer, Udall, Hardwick, Ahern & Hyatt, LLP
200 West Marcy Street, Suite 129
Santa Fe, NM 87501
PO Box 1984
Santa Fe, NM 87504-1984

Ronald J. Van Amberg, Esq.
P.O. Box 1447
Santa Fe, NM 87504-1447

Murray N. Thayer, Esq.
2021 Mountain Road, NW
Albuquerque, NM 87104-1444

on this 23 day of March, 2007.

Carl A. Calvert

Carl A. Calvert

RU
#C8

AIA® Document A121™CMc – 2003 and AGC Document 565

Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor

AGREEMENT
made as of the Twenty Eighth day of April in the year of Two Thousand and Four
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

RainbowVision Santa Fe LLC
4001 Office Court Road,
Suite 403
Santa Fe, NM 87505

and the Construction Manager:
(Name and address)

Weis Builders, Inc.
7645 Lyndale Avenue South
Minneapolis, MN 55423

The Project is:
(Name, address and brief description)

RainbowVision Santa Fe Retirement Community
500 Rodeo Road at Antigua
Santa Fe, NM 87505

The Architect is:
(Name and address)

Lloyd & Associates Architects
301 N. GuadalupeSuite 104
Santa Fe, NM 87501

The Owner and Construction Manager agree as set forth below:

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

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

The 1997 Edition of AIA® Document A201™, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

EXHIBIT
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™–1997, *General Conditions of the Contract for Construction, which is incorporated herein by reference.* For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™–1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™–1997 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

§ 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

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§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

~~§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the~~ Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of

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the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

.2 A list of allowances and a statement of their basis.

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents Issuance dates upon which the date of Substantial Completion is based.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

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(1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
(2) the Owner's first authorization to the Construction Manager to:
(a) award a subcontract, or
(b) undertake construction Work with the Construction Manager's own forces, or
(c) issue a purchase order for materials or equipment required for the Work.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™–1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

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ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials; ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™–1997, the Architect does not have such authority.

§ 3.3 ARCHITECT

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The Owner shall authorize and cause the Architect to provide Additional Services , requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be

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provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS
The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION
§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

The Construction Manager's fee for Preconstruction Phase Services shall be Seven Thousand Dollars ($7,000), in accordance with Weis's 1/22/03 letter of intent.

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond April 1, 2004 in accordance with Weis's 12/22/03 letter of intent.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 4.2 PAYMENTS
§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable Thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

Interest rate shall be 4% above US Bancorp Prime Rate.
(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

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§ 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

Base Fee will be Three percent (3.0%) of the Cost of the Work as defined in Article 6. For changes in the Work not associated with any " Resident Upgrade Packages" that are to be offered on a unit-by-unit basis, the fee for additive changes will be 3.0% and for deductive changes the fee will be 0.0%.

5.1.2

In addition to the basic fees in 4.1.1 and 5.1.1 above, the Owner shall pay the Construction Manager a Resident Upgrade Fee equal to 15% of the cost of the work, together with such reasonable administrative costs that the Construction Manager will incur directly related to the performance of such work, associated with the Resident Upgrade Packages that the Owner is planning to offer. It is the intent that a limited number of such Upgrade packages will be offered by the Owner, and that once the scope and cost for the upgrades being considered is established, the Owner and Construction Manager will incorporate by Amendment to this Contract the terms and conditions pursuant to which the Construction Manager shall perform such work. It is intended that the Construction Manager will establish a lump sum price per unit type for each Upgrade Package to be offered, and that said lump sum price shall include the fee and administrative costs described above, as well as define the date for each unit by which the Owner must direct the Construction Manager to proceed with the Upgrade. Unit upgrades for which direction to proceed is given after the agreed upon date, or which reflect a deviation in scope from the defined Upgrade Packages will be evaluated separately, and a cost and time adjustment proposed, by the Construction Manager.

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. At time of Final Completion, any costs savings shall be returned 100% to the Owner and 0% to the Construction Manager.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.3 CHANGES IN THE WORK

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™–1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™–1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™–1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

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§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

"Article 5.4: Commencement and Completion has been added. See Exhibit A."

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement. To the extent that some of the Construction Manager's supervisory and administrative personnel located at the Construction Manager's main office provide service to the project, a portion of their wages and salaries will be included in the cost of work and will be reimbursed in accordance with Exhibit C.

Classification Name

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed,

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whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds. ~~(If charges for self-insurance are to be included, specify the basis of reimbursement.)~~

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™–1997 or other provisions of the Contract Documents.

.6 Data processing costs related to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

.10 All premiums (without markup) and deductibles associated with Builder's Risk insurance provided by the Construction Manager at the Owner's request.

.11 All premiums (without markup) and deductibles associated with providing professional liability insurance for the mechanical and electrical design services for the condominiums and IL units.

§ 6.1.7 OTHER COSTS

.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager except, however, where conditions requiring such action were caused by or are the result of the Construction Manager's negligence.:

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.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™–1997.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA or A201™–1997 other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

.6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

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

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 See Exhibit A for revised Accounting Records requirements.

ARTICLE 7 CONSTRUCTION PHASE

§ 7.1 PROGRESS PAYMENTS

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

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

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§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™–1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee, less retainage of Five percent (5.00%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five percent (5.00%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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7.1.8.1 As an alternative means of achieving the 5% retainage described in 7.1.7 and 7.1.8 above, the Construction Manager and the Subcontractors may allocate a portion of their respective contract amounts to a "Final Completion" line item within each firm's schedule of values. The portions of each contract so allocated shall be equal to the 5% retainage stipulated. Billing against any such "final completion" line item in a schedule of values will be allowed only under the same circumstances as otherwise defined in the contract documents for the reduction or release of retainage.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™–1997 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™–1997. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™–1997.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's

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accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

(Paragraph deleted)

None

8.1.2 Insurance provided will be per the construction Manager's standard policy. The Construction Manager will provide the Owner with a statement of the additional premium cost (if any) associated with other insurance coverage as the Owner may want to consider. If the Owner elects to require the Construction Manager to provide other coverage or limits, then the contract will be adjusted accordingly.

§ 8.1.3

(Paragraph deleted)

§ 8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:

$10,000 Deductible Per Occurrence

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(Paragraph deleted)

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager shall (Insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to One hundred percent (100.00%) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner after the contract is executed and three days before the commencement of any Work at the Project site. Further, Construction Manager shall deliver a binding commitment for the issuance of such bonds at least two weeks prior to the estimated date for the closing on Project financing. In the event of any early start as identified in paragraph 4.2.1.1 Owner may require Construction Manager to provide such bonds. Owner shall provide Construction Manager with 10 days notice of such requirement and stipulate in such notice the time for providing same, and the amount of coverage required by owner.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™–1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™–1997, *General Conditions of the Contract for Construction.*

§ 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 9.2.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™–1997, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™–1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for

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Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager.

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain, and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™–1997.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™–1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™–1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

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11.1 thru 11.4
See Exhibit A

11.5
It is understood and agreed that the GMP is for the total cost of the work and that cost over-runs from one line item can be offset by cost savings from another line item.

11.6
All personnel listed in Exhibit C as a "Reimbursable as a cost of the work" shall be included in the cost of the work per Article 7.2, subject to the GMP per Article 6.1.2.2.

11.7
The following procedure is agreed to by Owner and or Owner's lender and Title Company in the event of a lien being filed by one of the Contruction Manager's Vendors and/or Vendor's Vendor(s): At the Construction Manager's sole discretion either 1. Construction Managershall make a cash deposit equal to 150% of each lien amount in separate escrow account held by Owner's Title Company on behalf of the; Construction Manager or 2. The Construction Manager may provide a lien transfer bond for the amount of the lien. Upon said deposit being made or lien bond being provided by Construction Manger, Owner and or Owner's Lender, and Title Company shall immediately disburse to Construction Manager any monies owed to Construction Manager under the terms of this contract.

11.8
Owner and Construction Manager agree to the following punch list procedure for each phase of the project:
1. Prior to issuance of temporary of Full Certificate of Occupancy by City, Owner and/or Owner's designated representative(s) shall prepare one original interior and exterior punch list.
2. Within 7 calendar days after completion punch list work by Construction Manager, Owner and/or Owner's representative(s) will re-inspect to confirm original punch list items are complete.
3. New items will not be added to the original punch list at any time except for items which are substantial (i.e. no hot water) and thus were obviously missed during original punch list items.
4. Any item(s) not included in original punch list shall be considered warranty item(s).
5. Warranty items shall not be considered outstanding punch list items and thus shall not be subject to withholding of final payments.

11.9
If a discrepancy occurs within this Agreement and/or between this Agreement and other contract documents, it is understood and agreed that Article 11 of this Agreement, the balance of this Agreement, and Exhibits "A", "B", "C" and "D"(in that order) shall govern.

11.10
If interest costs occur per Paragraph 4.2, the cost shall be reimbursed by issuance of an Owner Change Order.

11.11
Architect shall return all submittals (i.e. shop drawings) to Contractor within 10 working days of date received from Contractor.

11.12
Modification and/or extension of project completion date due to "weather days" shall be as outlined in Exhibit "D" attached hereto.

11.13
The following Exhibits, attached hereto, form part of the Contract Documents:
Exhibit A: Modifications to the A121CM
Exhibit B: Supplementary Conditions
Exhibit C: Personnel Billing Rates and Matrix

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Exhibit D: Definition of Weather Days.
Exhibit E: Project Scope and Budget Summary
Exhibit F: Preliminary Divisional Cost Breakdown
Exhibit G: Pre-Construction Phase Schedule
Exhibit H: Preliminary Construction Phase Schedule

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

OWNER	CONSTRUCTION MANAGER
(Signature)	(Signature)
DON SILVER, PRES	PETER WORTHINGTON, VICE PRESIDENT
(Printed name and title)	(Printed name and title)
April 30, 2004	APRIL 28 2004
Date	Date
ATTEST	ATTEST

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit A
Additional Provisions/Modifications based on the AIA A121CMC (2003 Edition)

5.4 COMMENCEMENT AND COMPLETION

Add the following paragraphs:

5.4.1 The date of commencement is the date from which the Contract Time of subparagraph 5.4.2 is measured; it shall be the date of the giving of the Notice to Proceed (the "Commencement Date"). The Owner shall issue the Notice to Proceed within ten calendar days of the last to occur of all of the following (the "Conditions to Commencement"): (i) closing of financing acceptable to Owner, sufficient in an amount to satisfy the Owner's financial obligations hereunder, and (ii) receipt of all permits and approvals necessary to allow commencement and continuation of construction. In no event shall the Construction Manager commence any work on site by placing materials at the site or by conducting other Work at the site until a Notice to proceed has been given.

The immediately aforementioned notwithstanding, Construction Manager and Owner acknowledge that prior to receiving a Notice to Proceed the Construction Manager may be required to enter into certain other subcontracts, issue purchase orders, or make similar commitments which, if the Project were not to proceed would result in the incurrence, by Construction Manager of certain costs, financial penalties, or other like or similar expenses. Owner agrees to reimburse Construction Manager all such costs, penalties, or similar expenses, so long as, and only to the extent that Construction Manager has received Owner's written approval prior to the incurrence of such costs, and/or the entering into such subcontracts, authorization of such purchase orders or making such similar commitments. Any activity conducted hereunder shall in no way effect the dates established for substantial completion for each phase as shall be provided for in Amendment No. 1 hereto.

5.4.2 It is anticipated that the Work is to be completed in phases so as to permit residents of the Project to move in on a phased basis (each of which shall be referred to as a "Phase").

.1 Substantial Completion of each Phase is to occur on or before an agreed date. The agreed dates for each Phase shall established by Amendment No. 1 to this Agreement at the time the GMP is established, which shall be an agreed upon number of calendar days from the Commencement Date. Once established each of these days shall be measured from the Commencement Date and may only be extended in accordance with the Contract Documents.

.2 Each date by which Substantial Completion of a Phase must occur pursuant to the Contract Documents shall be referred to as a "Phase Completion Deadline". The period of time from the Commencement Date to the applicable Phase Completion Deadline shall be referred to as the "Phase Contract Time".

.3 The Owner and the Construction Manager acknowledge that if the Construction Manager fails to achieve substantial completion of a Phase before the applicable Phase Completion Deadline, the Owner will suffer damages which are difficult to ascertain. However, the Owner and the Construction Manager agree that the degree to which the Owner will be damaged by the Construction Manager's failure to substantially complete a particular Phase of the Project within the Phase Contract Time generally will decrease as the overall Project nears Substantial Completion. Accordingly, the Construction Manager agrees to pay the Owner as liquidated damages with respect to each particular Phase, and not as a penalty, for each calendar day that passes after the Phase Completion Deadline has expired for the particular Phase of the Project, until the date that the Construction Manager achieves Substantial Completion of that particular Phase, an amount equal to the portion of the GMP allocable to that particular Phase times the construction financing daily interest for Project (the "Stipulated Damage

Amount"). Any liquidated damages payable by the Construction Manager as to a particular Phase shall then be determined by multiplying the Stipulated Damage amount by each day of delay. The Stipulated Damage Amounts for each phase shall be established by an amendment hereto at the closing for financing on the Project.

.4 For purposes of determining that portion of the GMP allocable to a particular Phase, the following method of calculating same will be utilized:

(i) Reasonably determine that amount of the total GMP which generally applies to construction of the Project (as a whole) by adding the sum of the following amounts contained within the GMP: (Specific amounts to be determined when GMP is established by Amendment to the Contract.)

Site Development	$_____
General Conditions	$_____
Construction Manager's Fee	$_____
Other	$_____
Total	$_____

(ii) Subtract total in (i) above from the total GMP to determine the "remaining GMP".

(iii) Utilize the approved Schedule of Values and construction costing information to calculate the percentage of the cost of a particular Phase to the "remaining GMP" amount as determined in (ii) above.

(iv) Apply the percentage from (iii) above for the particular Phase(s) to the GMP.

.5 The Stipulated Damage amount for each Phase is intended to be cumulative of the other Phases. Accordingly, if the Phase Completion Deadline for more than one (1) Phase shall have elapsed without the applicable Phases having been substantially completed, then the Stipulated Damage Amount for each Phase not so substantially complete shall be due and owing by the Construction Manager to the Owner. The Owner may collect the Stipulated Damage Amounts by withholding them from payments due the Construction Manager or by separate demand. The Stipulated Damage Amounts provided herein shall be in lieu of all other claims, costs, losses, damages and/or expenses that the Owner might otherwise have against the Construction Manager by reason of its failure to achieve Substantial Completion before the relevant Phase completion Deadline, whether arising from contract or tort, or actual, direct, indirect or consequential damages, and the Owner hereby releases the Construction Manager therefrom.

.6

.1 The Construction Manager agrees that final completion of each Phase of the Work shall occur as soon as possible after Substantial Completion of the Phase, but no later than thirty (30) calendar days after the date on which Substantial Completion of that Phase has occurred, as evidenced by the Architect's Certificate of Substantial Completion. Final payment as to a Phase shall be due upon final completion of such Phase.

.2 Owner acknowledges that there may be certain items which may be on order that, through no fault of the Construction Manager, may not arrive and/or otherwise be available for incorporation into the Work within said thirty (30) day period. To the extent that Owner, in Owners sole discretion, accepts a Phase as having achieved final completion, even though such items remain outstanding, Owner may, (a) acknowledge such acceptance, and (b) withhold up to one and one half (1.5) times the total cost (as determined by the Construction Manager) for each Phase, or $5000 for each Phase (whichever is greater), of such Work which remains incomplete or unincorporated.

.3 Further, it is the intent that outstanding items described in 5.4.2.6.2 are to be secured and installed as quickly as possible – preferably within five (5) days after the Construction Manager receives those items. It is acknowledged that some items may be more significant than others in terms of the operation or marketability of the project. It is also acknowledged that unless determined otherwise, the costs incurred by the Construction Manager for procuring, expediting and installing the items covered by 5.4.2.6.2 are reimbursable costs as defined under Article 6 of the Contract. Accordingly, it may be less costly for the Owner, and less disruptive to the operation of the facility, to have several items accumulated and installed at one time rather than have each item installed as it is delivered. Therefore, for each item outstanding as of Substantial Completion, within five (5) days the Construction Manager shall provide the Owner, in writing, with a proposed plan indicating the expected delivery date and proposed installation date for each item. The Owner and Construction Manager will jointly review (and revise as needed) said plan and reach an agreement on the plan. The Construction Manager will report to the Owner on a weekly basis of the status of the items remaining to be installed, and immediately notify the Owner of any change in delivery date or installation date due to unforeseen procurement or delivery problems. If, after receiving an outstanding item the Construction Manager fails to commence the Work within five (5) days after agreed upon commencement date, or subsequently fails to complete the Work in accordance with the agreed upon schedule,the Owner may exercise its right to carry out the work as provided in section 2.4 of the A201 General Conditions

.4 The provision stated above for withholding 1.5 times the cost of items outstanding at the time of Substantial Completion does not apply to any Upgrade Options initiated by the Owner subsequent to the decision date established by the Construction Manager for each upgrade option proposed for a given residential unit.

.7 Except for the portions of the project which the Owner has requested completion and occupancy prior to the completion of the Commons Areas in the El Centro building, it is the intent that when developing the Phase Completion Deadlines described in 5.4.2.1 and 5.4.2.2 above, for the purposes of determining what, if any, stipulated damage amount may be owed by Construction Manager, no phase shall be deemed to have achieved Substantial Completion until such time as (1) the common areas (as defined in Amendment No. 1) portion of the Project shall have achieved Substantial Completion or (2) the Owner agrees to deem the phase Substantially Complete or (3) the Owner takes beneficial occupancy of all or part of the phase. Further and accordingly, when establishing the completion dates for each phase as provided for herein by amendment hereto, such amendment shall also provide that no phase shall be deemed complete for the purposes hereof unless (1) and/or until the commons area portion of the Project shall have attained substantial completion, (2) the Owner has agreed to deem the phase Substantially Complete, or (3) the Owner takes beneficial occupancy of all or part of the phase.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be satisfactory to the Owner and Owner's lender. The Owner and the Owner's accountants and the lender and lender's accountant or consultants shall be afforded reasonable access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement and the Project, (collectively "the records") and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. All Records shall be maintained in accordance with generally accepted accounting principles, consistently applied. There shall be an "open book" policy, in effect at all times with regard to all Records relative to the project

maintained by either the Construction Manager or the Owner, or anyone on their behalf, and each party shall have full and complete access to said Records maintained by the other at all reasonable times. The Construction Manager shall require all Subcontractors and Sub-Subcontractors retained on a cost-plus basis to retain Records and permit the same access by Owner as is required of the Construction Manager under this Article 6.4.

6.4.1.1 If the Owner, Owner's accountants, Lender or Lender's accountants elect to perform an audit of "the records" maintained by Construction Manager, said audit shall be performed within six (6) months of the Final Completion of the project. This stipulation does not affect the Construction Manager's obligation to maintain "the records" for the time period noted in 6.4.1.

6.4.2 If, at any time during construction, any inspection by the Owner or the Lender of the Construction Manager's Records or any other data relating to the contract documents reveals an overcharge or undercharge by the Construction Manager as confirmed by an independent auditor, the next Application for Payment shall be appropriately adjusted by the amount of such overcharge or ~~undercharge and related Fee.~~

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

Add the following:

7.1.11 To the extent of payments received by the Construction Manager from the Owner, the Construction Manager warrants the real property on which the Project is located will remain free of any legitimate and proper claims of lien arising from the Work performed by or through the Construction Manager. If any such liens are properly recorded, the Construction Manager shall have fifteen (15) business days from its receipt of written notice by the Owner or Owner's agent (including Title company) of such recording within which to discharge or secure by cash deposit or by construction lien transfer bond any such claims of lien. If the Construction Manager fails to discharge or otherwise secure such claim of lien within said time period, the Owner shall be entitled to satisfy the lien or take whatever action it deems appropriate to remove the lien from its property. All reasonable expenses and costs, including reasonable attorney's fees, incurred by the Owner after the abovementioned fifteen (15) day period to effect the discharge, securing and/or removal of any such claims of lien shall be promptly reimbursed to the Owner by the Construction Manager.

7.1.12 Concurrently with each Application for Payment, Construction Manager will deliver to Owner lien waivers (which may be conditioned upon payment) waiving all lien rights in respect of the Project, executed by Construction Manager, and executed by Subcontractors and suppliers covering amounts paid on their account or to be paid with funds received from such Application for Payment. All lien waivers shall be in form and substance satisfactory to Owner and the Owners Lender(s). Additionally, the Construction Manager shall provide further evidence regarding application of each progress payment to payment of all Subcontractors and suppliers providing services or material in respect of the Project, and shall comply with such other reasonable requirements as the Owners Lender(s) may impose with respect to obtaining advances of funds be applied to each Application for Payment."

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION

Add the following the following subparagraphs to 9.1.1:

.1 Claims between the parties to this Agreement shall be resolved as set forth below. At all times, the parties shall approach the dispute resolution process in good faith.

.2 In the event of a Claim between the parties, the parties shall promptly meet in good faith to resolve the Claim informally before invoking the dispute resolution procedures ~~outlined elsewhere in the Contract Documents, including the A201 General Conditions and~~ Supplementary Conditions, and below. If the parties are not able to quickly resolve the claim, either party may request participation by the Architect. Both parties shall promptly submit a written summary of its position to the Architect. Upon receipt of both summaries, the Architect shall immediately convene a formal meeting with the parties to further discuss the Claim. If the Claim is not resolved within three business days after the commencement of such meeting, either party may then commence the dispute resolution process defined in the Contract Documents.

.3 If the informal dispute resolution efforts outlined in 9.1.1.2 are not successful, then the dispute resolution procedures outlined in the balance of the Contract Documents. Any mediation conducted pursuant to this Paragraph 9.1 shall be heldin Santa Fe, unless the parties mutually agree otherwise.

.4 Intentionally omitted
.5 Intentionally omitted

.6 Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

.7 Intentionally omitted
.8 The arbitration shall be held in Santa Fe.

.9 Notwithstanding anything herein to the contrary, if (1) the Claims involve a proposed, net aggregate payment or reimbursement in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose, an "interested person or entity" means any person or entity if (a) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (b) the interested person or entity is so situated that the disposition of the claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as other wise permitted by the Contract Documents or by law.

ARTICLE 11
OTHER CONDITIONS AND SERVICES

11.1 The Construction Manager recognizes that any Lender involved in financing the Project will have requirements pertaining to this Agreement. The Construction Manager agrees to cooperate with and assist the Owner and the Architect in amending and supplementing the Contract Documents to conform to reasonable and customary requirements of any Lender (to the extent such requirements are acceptable to the Owner). However, the Construction Manager shall not be responsible for actually preparing amendments or supplements to the Contract Documents for any reason at any time. Such amendments or supplements may include, without limitation, provisions:

A. Naming any Lender as an additional insured on the Construction Manager's bonds and insurance policies and providing notice to any Lender of termination, cancellation or material modification of such policies.

B. Requiring approval of Applications for Payment by a consultant designated by a Lender prior to payment.

C. Agreeing not to amend Contract Documents without the reasonable and timely consent of the Lender.

D. Requiring approval of Change Orders by the Lender, provide that Lender approval will be provided on a timely basis and the Owner will use its best efforts to secure such timely approval.

E. Requiring notice of the Owner's default to the Lender, with a Lender having the right to cure, and requiring continued performance by the Construction Manager, provided that the Lender assumes all contract obligations of the Owner.

F. Subordinating any lien rights of the Construction Manager to rights of the Lender.

G. Requiring copies of all written notices to be sent to the Lender.

H. Granting the Lender the right to inspect the work and to examine records pertaining thereto.

I. Recognizing the pledge of the Owner's rights under Contract Documents to the Lender.

J. Requiring the Construction Manager to acknowledge, on the Lender's request, whether or not the Owner is in default of its obligations under the Contract.

K. Requiring the Construction Manager to assist the Owner in preparing and submitting reports and information concerning the Work as may be reasonably required by the Lender.

11.2 Nothing contained in Paragraph 11.2 or Paragraph 11.3 is intended to derogate from any other rights to terminate this Contract that may be granted the Construction Manager elsewhere in this Contract, including, but not limited to, the provisions of Article 2 and Article 14 of the General Conditions and Article 10 of this Agreement.

11.3 The Construction Manager may perform all or any part of the Work with its own forces, or through an Affiliate, provided that (1) the Construction Manager secures at least two competitive bids with respect to the work Construction Manager intends to perform (2) the Owner consents thereto in writing, which consent shall not be unreasonably withheld, after full disclosure by the Construction Manager to the Owner of the affiliation or relationship of the Affiliate to the Construction Manager and (3) any Work performed by an Affiliate shall be covered in a separate agreement between the Construction Manager

and the Affiliate, which shall satisfy all of the requirements for subcontracts as set forth in Paragraph 5.3 of the General Conditions and which shall be approved by the Owner in writing.

11.4 Any amounts payable hereunder which are not paid when due shall thereafter accrue interest at Wall Street Journal "prime" plus one percent (1%) per annum or at the highest rate allowed under the law of the state where the Project is located, whichever is less.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit B
Supplementary Conditions to the AIA A201 General Conditions (1997 Edition)

1. The following Supplementary Conditions shall apply to that certain Standard Form of Agreement Between Owner and Construction Manager (the "Agreement") dated

2. For purposes of these Supplementary Conditions, capitalized terms shall have the meaning given to them in the Contract Documents (as such term is defined in Article 1 of the Agreement), unless otherwise defined in these Supplementary Conditions.

3. ~~The following paragraphs supplement, modify, or amend that certain Contract Document entitled~~ "General Conditions of the Contract for Construction," AIA Document A201, Fifteenth Edition, 1997, Articles 1 through 14 inclusive (the "General Conditions"). Where only a portion of any provision of the General Conditions is supplemented, modified, or amended, the remaining portions of that provision shall remain unaltered and in effect. In the event of any inconsistency between the General Conditions and these Supplementary Conditions, the terms of these Supplementary Conditions shall apply. Hereinafter, all references to the General Conditions shall mean the General Conditions as amended by these Supplementary Conditions.

A. INTENTIONALLY OMITTED

B. PARAGRAPH 1.2.4 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.4 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with quality of the surrounding Work and of the construction of the Project generally.

C. PARAGRAPH 1.2.5 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.5 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

D. INTENTIONALLY OMITTED

E. SUBPARAGRAPH 1.5.1, add at the end of the first sentence: ", unless otherwise identified and incorporated by reference in Agreement."

F. SUBPARAGRAPH 2.2.5 Modify Subparagraph 2.2.5 as follows:

"In addition to the sets the Construction Manager used for bidding, the Owner will furnish a to be agreed upon number of sets of black and white prints of the Drawings and copies of the Project Manual free of charge for execution of the Work. Additional sets may be purchased from the Office of the Architect."

G. SUBPARAGRAPH 3.2.3, delete the second sentence, and add at the end: "If the Construction Manager performs Work knowing it involves such error, inconsistency, omission or difference without such notice to the Architect, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributed to correction."

H PARAGRAPH 3.3 "SUPERVISION AND CONSTRUCTION PROCEDURES" is hereby supplemented by the addition of the following sub-paragraphs:

3.3.4. The Construction Manager shall carefully check its own work and that of Subcontractors as the Work is being performed. The Construction Manager shall ensure that incorrect or faulty Work is corrected as soon as possible but in any event in a timely manner so as not to impact the project schedule.

3.3.5 During the finishing stages of the project, the Construction Manager shall make frequent inspections of the Work in the presence of the Architect or the Owners Representative and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work. The Construction Manager shall ensure that incorrect or faulty Work is corrected in accordance with 3.3.4.

I. PARAGRAPH 3.4 "LABOR AND MATERIALS" is hereby supplemented by addition of the following Subparagraphs 3.4.3 and 3.4.4:

3.4.4 Should the Owner make reasonable objection, based upon qualifications, fitness, behavior or temperament, to the presence of any personnel of Construction Manager or any subcontractor, such person shall not perform services on the Project site, or otherwise in connection with the Project, without written consent of the Owner.

3.4.5 The Construction Manager shall not change or replace the assigned Project Manager or Superintendent without prior written consent by the Owner.

J. SUBPARAGRAPH 3.5.1, Add to the end: "Construction Manager's warranties shall commence upon Substantial Completion of the Work for each Phase and continue for a period of one year thereafter."

K. PARAGRAPH 3.5 "WARRANTY" is hereby supplemented by the addition of the following sub-paragraphs:

3.5.2. In the event of a claim by the Owner against the Construction Manager under Paragraph 3.5.1. of these General Conditions (or under any other express written warranty-made by the Construction Manager) for any item of Work performed under the Contract Documents, the Owner shall give notice (a "Warranty Notice") of the claim to the Architect and the Construction Manager and thereafter, the Architect or Architects authorized representative and the Construction Manager shall inspect the item(s) of Work in question. If following its inspection the Architect determines that any such item is included within the Construction Manager's warranty under the Contract Documents, then:

(a) Upon formal notification from the Architect, the Construction Manager shall have thirty (30) days, notwithstanding any other time period specified in the Contract Documents, to either (1) complete the cure for the item or, for a Longer Cure item, commence the cure and thereafter diligently proceed to complete the cure, or (2) if the Construction Manager disputes the warranty coverage of the item, commence the

dispute resolution procedures described in Section 4.3 of the General Conditions.

(b) if upon the expiration of the thirty (30) day period the Construction Manager has failed to satisfy the provisions of either clause (a) (1) or clause (a) (2) immediately above, then the Owner shall have the right to engage a third party Construction Manager of the Owner's sole selection to cure or complete the cure of the warranty item at the Construction Manager's expense.

(c) If the Construction Manager fails to cure an item within the required time and if the item is finally determined by arbitration or, when permitted, judicial proceedings to be covered by any Construction Manager's warranty under the Contract Documents, then the Construction Manager shall be liable for all expenses incurred by the Owner in enforcing its warranty claim including legal and Architectural fees and expenses, an administrative charge of a percentage equal to Construction Manager's fee times the cost to cure the warranty item to cover the Owner's administrative costs to enforce the warranty claim, and, when a third party Construction Manager has been engaged by the Owner under this Paragraph 3.5.2, the costs and expenses of the third party Construction Manager.

L. INTENTIONALLY OMITTED

M. ARTICLE 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES is supplemented by the following replacement language for Subparagraph 3.12.4

3.12.4 Shop Drawings, Product Data, Samples and similar submittals which are required by the Contract Documents to be submitted for Architect's review shall become Contract Documents upon Architect's review and approval. Submittals which are not required by the Contract Documents to be submitted for Architect's review are not Contract Documents.

N. ARTICLE 3.16 "ACCESS TO WORK" is hereby supplemented by addition of the following Subparagraph:

"3.16.2 Representatives of the State Agencies shall have access at all reasonable times to the Work wherever it is in preparation or progress, and the Construction Manager shall provide proper facilities for such access and inspection."

O. PARAGRAPH 4.2.4 "COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION" is hereby supplemented by the additions of the following subparagraphs: Nothing contained herein shall prohibit the Owner's Representative from communicating directly with the Construction Manager for the purpose of receiving information and/or providing the Construction Manager with clarification as to Owner's position with regard to any matters affecting or concerning the Work.

4.2.4.1 The following definitions shall apply to construction communications:

4.2.4.1.1 Contract Document Clarifications: An answer from the Architect, in response to an inquiry from the Construction Manager, intended to make some

requirement(s) of the Drawings or plans clearly understood. Drawing/plan clarifications may be sketches, drawings, or in a narrative form and are not intended to change any requirements of the Contract Documents. Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.2 Non-Conformance Notice: A Notice issued by the Architect documenting that the Work or some portion thereof has not been performed in accordance with the requirements of the Contract Documents. Payment shall not be made on any portion of the Work for which a Non-Conformance Notice has been issued and the Work not corrected to the satisfaction of the Architect.

Upon receipt of a Non-Conformance Notice the Construction Manager shall provide a written Response to the Non-Conformance Notice within five (5) working days after receipt of the Notice. The Construction Manager's response shall state either (a) the basis of Construction Manager's determination that the Work was performed in accordance with the Contract Documents or (b) the corrective action Construction Manager intends to take, at its sole expense, to correct the non-conforming work

If the Construction Manager disputes issuance of the Notice the Architect has five (5) working days in which to respond by either (a) withdrawing the Notice of Non-Conformance or (b) directing the Construction Manager to correct the Work.

If directed to correct the Work, the Construction Manager shall do so within five (5) working days after receipt of such direction from the Architect, or such other time as may be agreed to with the Architect, without loss of rights for claim recovery or dispute resolution as may be available by the Contract.

4.2.4.1.3 Requests for Information: A written request from the Construction Manager or one of its subcontractors, to the Architect, seeking an interpretation or a clarification of some requirement of the Contract Documents. The Construction Manager shall clearly and concisely set forth the issue for which it seeks clarification or interpretation and why a response is needed from the Architect.

Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.4 Substitution/Or-Equal Submittals: A written request from the Construction Manager to substitute a material, article, device, product, fixture, form, type of construction, or process called for in the Contract Documents with another item that shall substantially equal in all respects to that so indicated or supplied. Each such request shall specifically set forth any manner in which the proposed change does not conform to the Contract Documents and Construction Manager (and any subcontractor initiating the request) warrants that the proposed substitute conforms in all respects with the contract documents except as specifically identified as non-conforming in the request.

4.2.4.1.5 Submittals/Shop Drawings: When required by any technical specification included in these Contract Documents, the Construction Manager shall transmit to the Architect technical submittals, shop drawings, or samples, including supporting catalog cuts, manufacturer's literature, sketches or drawings, calculations, and other pertinent, in sufficient detail to enable the Architect to review the information and determine that the Construction Manager clearly understands the requirements of the Contract Documents. Construction Manager (and any subcontractor initiating a submittal) warrants that all Work and materials depicted in technical submittals, shop drawings and samples shall conform in all respects to the requirements of the Contract Documents, except as otherwise specifically identified as non-conforming.

4.2.4.1.6 Schedule Submittals: When required by the Construction Schedule Specification of these Contract Documents, the Construction Manager shall submit required schedules, schedule updates, schedule revisions, time impact analysis, etc. for review.

P. INTENTIONALLY OMITTED

Q. SUBPARAGRAPH 4.3.7.2 is hereby revised (and paragraphs 4.3.73 and 4.3.7.4 are added) to read as follows:

4.3.7.2 Weather days: Construction Manager confirms that the Contract Time, Phased Contract Time and the agreed upon dates for same as set forth in Amendment No. 1 to this Agreement are reasonable periods to perform The Work. Construction Manager has included in the work schedule ordinary and normally anticipated lost days due to adverse weather ("weather days") and therefore Construction Manager shall not be entitled to an extension of the Contract Time or Phased Contract Time as a result of weather conditions normally experienced in the greater Santa Fe area unless (1) the Construction Manager is unable to make up for the weather delay by scheduling work for a Saturday in accordance with in 4.3.7.2 below, and (2) the number of weather days lost (and not made up by Saturday work) in that calendar month exceeds the number of weather days provided for in the Contract Time.

4.3.7.3 The Construction Manager's work schedule is based upon a regular five-day work week *per calendar week*. It is mutually agreed that in the event of a weather day the Construction Manager, before requesting a time extension the Construction Manager will first try to make up that weather day on the next Saturday available during the following 30 calendar days. A Saturday will be considered to be "available" only if all of the following conditions are met: (1) no work has already been scheduled for that day that would interfere with the work being rescheduled, (2) it is not a national holiday, (3) working on that Saturday is allowed by local ordinance, and (4) materials and workforce equivalent to what was scheduled for the lost weekday are available on that Saturday. The Construction Manager will only be required to utilize a Saturday if either (a) the Construction Manager incurs no additional cost in rescheduling work for that Saturday, or (b) the Owner agrees to compensate the Construction Manager (by Change Order) for any additional costs (such as for labor rate differential) the Construction Manager may incur.

4.3.7.4 The requirement stated above for the Construction Manager to utilize a Saturday to make up for a weather delay only applies the number of weather days included in each calendar month as indicated in the following list of Anticipated Lost Days. For every weather day beyond the number included below, the Construction Manager shall be entitled to an equivalent number of days extension to the Contract Time. The Construction Manager may (at the CM's sole discretion) attempt to mitigate the delay utilizing additional Saturdays as outlined in 4.3.7.3, but has not obligation to do so.

For the purposes of this Paragraph the table provided below setting forth the norms/anticipated lost weather days shall be utilized by the parties in determining lost weather days:

Month	Anticipated Lost Days Due to Adverse Weather
January	1
February	1
March	0
April	1
May	0
June	0
July	1
August	1
September	2
October	2
November	1
December	0

See the Exhibit D "Weather Delays" - attached to the Contract.

R. INTENTIONALLY OMITTED

S. SUBPARAGRAPH 4.6.8, add as new subparagraph :

"4.6.8 Limitations of Arbitration. Notwithstanding anything in the Contract Documents to the contrary, if (1) the Claims involve a proposed, net aggregate payment to owner or Construction Manager in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose an "interested person or entity" means any person or entity if (3) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (4) the interested person or entity is so situated that the disposition of the Claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as otherwise permitted by the Contract Documents or by law."

T. SUBPARAGRAPH 5.2.1, change "promptly" to "within 10 days" in lines 5 and 7.

U. PARAGRAPH 7.3 "CONSTRUCTION CHANGE DIRECTIVES"

Subparagraph 7.3.3.3 is hereby changed to read as follows:

7.3.3.3 The following fees apply to Changes to the Work;

7.3.3.3.1 INTENTIONALLY OMITTED

7.3.3.3.2 The same markup applied by the subcontractor in the subcontractors base subcontract, which shall be defined in said subcontract and subject to Owner's approval, to the cost of work performed by any subcontractor.

V. INTENTIONALLY OMITTED

W. INTENTIONALLY OMITTED

X. PARAGRAPH 9.8.1. of the General Conditions is hereby deleted in its entirety and the following is substituted in lieu thereof:

9.8.1 "Substantial Completion" of the Project shall be deemed to occur when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and, in addition, all requirements of the Contract Documents for Substantial Completion, including the following conditions, have been fulfilled as follows:

a. A Temporary of Final Certificate of Occupancy has been issued and all construction related approvals, licenses and requirements have been obtained or satisfied for the Project such that the Project may be operated for its intended use.

b. INTENTIONALLY OMITTED

Y. PARAGRAPH 9.8.2. of the General Conditions is hereby deleted in its entirety and the following Paragraphs 9.8.2.1. through 9.8.2.6. are substituted in lieu thereof:

9.8.2.1. When the Construction Manager considers that the Work, or portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Following receipt of the Construction Manager's list, the Architect will make an inspection (the "Initial Punch List Inspection") to determine whether the Work or designated portion thereof is Substantially Complete. Upon completion of its Initial Punch List Inspection, the Architect shall prepare and submit to the Construction Manager and the Owner the Architect's list (the "Punch List") of items to be completed or corrected. For the items on the Punch List, the Architect shall specify:

a. a date (a "Punch Item Date") by which such items shall be completed, which Punch Item Date shall be no more than forty-five (45) days from the date of the Punch List unless the Architect determines that reasonable cause exists for a later completion date; and

b. the cost to complete or correct the items as reasonably determined by the Architect.

The Architect shall expressly state on the Punch List what the Construction Manager must do to achieve Substantial Completion under Paragraph 9.8.1 of the General. If as a result of the Initial Punch List Inspection the Architect determines that Substantial Completion has occurred, the Architect shall prepare a Certificate of Substantial Completion pursuant to Paragraph 9.8.2.5 below.

9.8.2.2 If the Construction Manager has not given notice that the Work is substantially complete and requested inspection thereof on or before the date for Substantial Completion set by the parties in the Contract Documents, then the Owner may request the Architect to make an Initial Punch List Inspection of the Work to (x) prepare the Punch List pursuant to the provisions of Paragraph 9.8.2.1. above and (y) determine if Substantial Completion has occurred.

9.8.2.3. Upon the request of the Construction Manager prior to the expiration of the relevant Punch Item Date(s) and for good cause shown, the Architect may extend any Punch Item Date(s) for a reasonable period. Following receipt of the Punch List and the Construction Manager's compliance with the requirements of Paragraph 9.8.1. above, the Construction Manager may submit a request for another inspection by the Architect, if necessary, to determine whether Substantial Completion of the Work has been achieved.

9.8.2.4. If the Construction Manager fails to satisfactorily complete any item(s) on the Punch List by the applicable Punch Item Date(s), then the Owner has the right to take over the work in accordance with Section 2.4 of the General Conditions.

9.8.2.5.When the requirements of Paragraph 9.8.1. above have been met and upon the request of either the Owner or the Construction Manager, the Architect shall prepare a Certificate of Substantial Completion, in the form set out in Paragraph 9.8.3 below, which shall establish the date of Substantial Completion and shall establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise specifically stated in the Contract Documents or in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Construction Manager for their written acceptance of responsibilities assigned to them in such certificate.

Z. INTENTIONALLY OMITTED

AA. In addition to the provisions of Paragraph 9.10 Final Completion shall not have been deemed to have occurred until the date upon which all of the following have occurred:

a. INTENTIONALLY OMITTED

b. Delivery of conditional or unconditional lien waivers from each person who performed work at or provide or fabricated materials in connection with the Work (including all subcontracts executed in connection therewith), other than from those persons whose claims are being contested by Construction Manager in good faith and for which Construction Manager has provided to Owner a bond or security in an amount reasonably acceptable to Owner, and

c. Issuance and obtaining of a final, unconditional certificate of occupancy and all construction-related approvals, licenses, and requirements for the Project enabling it to be occupied and operated for its intended use.

BB. SUBPARAGRAPH 9.10.4.1, after "Claims" add: "previously made in writing and identified by Owner as unsettled at the time of final payment."

CC. Paragraph 10.1.1 add the following: "Construction Manager shall prepare and submit to Owner for Owner's approval a comprehensive safety program. Further, Construction Manager shall provide written verification and certification in a form satisfactory to the

Owner, that all subcontractors have familiarized themselves with the safety program and agreed to abide by said program and training regimen thereunder.

DD. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." In the first line of Subparagraph 11.1.1, following the work " companies," insert the following:

", acceptable to the Owner,."

EE. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." Add the following to subparagraph 11.1.3:

"Certificates called for herein shall be furnished in duplicate and shall specifically set forth evidence of all coverage required by 11.1.2 and the Construction Manager shall furnish to the Architect copies of all endorsements that are subsequently issued amending coverage or limits."

FF. SUBPARAGRAPH 13.4.3, add as a new subparagraph:

"In the event of any litigation between the parties, the prevailing party shall be entitled to reimbursements for all reasonable attorneys' fees, expert fees, court costs, and all other third-party costs of the litigation incurred by the prevailing party to the extent allowed by law."

GG. PARAGRAPH 13.5 "TESTS AND INSPECTIONS" is hereby supplemented by the addition of the following subparagraph:

"13.5.7 When work has been installed contrary to any Contract requirements and the Construction Manager requests the privilege of testing in lieu of removal, such testing shall be at the Construction Manager's expense."

HH. INTENTIONALLY OMITTED

II. Add the following new Article:

ARTICLE 15: REQUESTS FOR INFORMATION

15.1.1 In the event that the Construction Manager or its subcontractor, at any tier, determines that some portion of the Drawings, Specifications, or other Contract Documents requires clarification or interpretation by the Architect, the Construction Manager shall submit a Request for Information in writing to the Architect. Requests for Information may only be submitted by the Construction Manager and shall be only submitted on the Request for Information Forms provided by the Architect. The Construction Manager shall clearly and concisely set forth the issue for which clarification and interpretation is sought and why a response is needed from the Architect. If the Request for Information is being used to request confirmation of an interpretation or understanding of a requirement, the Construction Manager shall set forth that interpretation or understanding of the requirement along with reasons why such an understanding was reached.

15.1.2 The Architect will review all Requests for Information to determine whether they are Requests for Information within the meaning of this term. If the Architect determines

that the document is not a Request for Information, it will be returned to the Construction Manager, unreviewed as to content, for resubmittal on the proper form and in the proper manner. In either case, the Architect must reply to RFI in writing within the time requested by the Construction Manager, or three (3) working days, whichever is earlier.

15.1.3 Responses from the Architect are not intended to change any requirement of the Contract Documents. In the event the Construction Manager believes that a response to a Request for Information will cause a change to the requirements of the Contract Document, the Construction Manager shall immediately give written notice to the Architect in accordance with Section 4 of the General Conditions stating that the Construction Manager considers the response to be a change in the scope of work or a change to the project schedule..

END OF SUPPLEMENTARY CONDITIONS

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit "C"

Weather Delays

1. A "Work Day" is defined at Monday thru Friday, 7:30 am– 4:400 pm.

2. The occurrence of one or more of the following will constitute a weather delay as indicated:

   a. 0.25" of rain during the workday constitutes one lost workday
   b. 2.0" of snow during the workday constitutes one lost workday
   c. 12" of snow in a 24-hour period constitutes two lost workdays.
   d. Temperature of 5 degrees below zero (Fahrenheit) constitutes one lost workday.
   e. Any drying time required for soil stabilization (as directed by the geotechnical engineer) due to rain or snow will constitute lost work day(s).

3. Weather days will be included in the final schedule approved as part of the GMP proposal to be incorporated into the contract by amendment. The number of weather days included will be in accordance with Section 3.P of Exhibit B. Adjustments to the contract completion dates due to adverse weather will be made in accordance with Section 3.P of Exhibit B.

RainbowVision Santa Fe/Wels Contract Agreement
Exhibit "D"
Personnel Billing Rates

Position	Reimbursable as a Cost of the Work (w/in GMP)	Included In Fee	Notes	Expected to be Full or Part Time	Billing Rate ($/hr)
Field Staff Stationed on Site					
Superintendent	X		1	Full	$70
Project Engineer, QA/QC	X		1	Full	$60
Carpenter	X		2	Full	Varies - local rate
Laborer	X		2	Full	Varies - local rate
Personnel Not Stationed on Site					
Vice President		X			
CFO		X			
Project Manager	X		3	Part	$75
General Superintendent	X		3	Part	$75
Project Coordinator		X			
Safety Director	X		3	Part	$50
Project Accountant		X			
Pre-Construction Personnel					
Senior Estimator/Pre-Con Services M	X		4	Part	$90
Assistant Estimator	X		4	Part	$60

Notes:

1 Field staff on project site.
2 It is expected that all trade work will be subcontracted. Trade labor rates shown only if need for Gen Conditions.
3 Billed only for time spent on site and traveling to project
4 Billed only for time during pre-construction phase, subject to Pre-construction services billing cap (see Exhibit F).

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit E
Project Scope & Budget Summary

- The Scope of the project includes:
  - 40 Single-story Condominium living units
  - 80 Single-level Independent Living units built in a series of two-story buildings
  - 26 Assisted Living apartments (and related support spaces) constructed on the 2nd level of the central services building
  - Central services building (El Centro) containing commercial kitchen, dinning spaces, activity spaces, administrative and marketing offices, retail spaces, and a spa/wellness center.
  - ~~13 acres of site development, with some off-site, public improvements~~
  - Total building area is approximately 183,000 sf.

- Based on a preliminary site plan and building design commissioned by the Owner, the Construction Manager prepared a detailed, preliminary cost report and presented that report to the Owner on February 1, 2004. Based on that scope and cost report, the Owner has established a construction budget of $20,540,000, based on the Preliminary Divisional Cost Breakdown shown in Exhibit F.
- The Owner has contracted with the Architect to complete the design of the project in accordance with the budget stated above. The completion of the design, and related activities is proceeding in accordance with the Preconstruction Phase Schedule prepared and updated regularly by the Construction Manager. See Exhibit G.

- The Construction Manager has also prepared a Preliminary Construction Schedule. See Exhibit H. A final Construction Schedule will be included in the GMP report and made part of the contract by amendment.

- The Owner, Architect and Construction Manager are working together to monitor the completion of the design to ensure meeting the Construction Budget.

- Upon receipt of the Design Development documents, the Construction Manager will, in accordance with contract Section 2.2 prepare a GMP report that will include all of the elements outlined in Section 2.2.4. Prior to submitting the final GMP report, the Construction Manager will review the preliminary cost estimates with the Owner and Architect to determine if any adjustments to scope are required in order to achieve the construction budget stated above. Upon approval by the Owner, the GMP will be incorporated into the contract by amendment, in accordance with Section 2.2.

- *During the completion of the design The Construction Manager will continue to meet* regularly with the Owner and Architect, and will regularly review the Architect's work in progress to monitor the design as a means to ensure conformance to the construction budget.

RainbowVision Santa Fe/Weis Contract Agreement
EXHIBIT F

Preliminary Divisional Cost Breakdown

C.S.I. SYSTEMS BREAKDOWN		Total Costs	%
Division 1 - General Conditions		$1,047,401	5.9%
Division 1 - Building Permit Allowance		$184,620	1.0%
Division 2 - Site Construction		$1,534,319	8.7%
Division 3 - Concrete		$965,149	5.5%
Division 4 - Masonry		$488,508	2.8%
Division 5 - Metals		$439,822	2.5%
Division 6 - Woods & Plastics		$2,609,476	14.8%
Division 7 - Thermal & Moisture Protection		$968,353	5.5%
Division 8 - Doors & Windows		$771,105	4.4%
Division 9 - Finishes		$3,286,198	18.6%
Division 10 - Specialties		$592,969	3.4%
Division 11 - Equipment (See Note 1)		$445,320	2.5%
Division 12 - Furnishings (See Note 2)		$49,196	0.3%
Division 14 - Conveying		$230,919	1.3%
Division 15 - Mechanical		$2,410,820	13.7%
Division 16 - Electrical		$1,636,100	9.3%
Sub-Total		$17,661,276	100%
Escalation - For 2004	0.0%	-	
Sub-Total		$17,661,276	
Est./Const Contingency - El Centro	5.0%	$243,521	
Est./Const Contingency - Balance	3.0%	$383,726	
Sub-Total		$18,288,523	
Builders Risk Insurance	0.8%	$146,308	
Liability Insurance	0.85%	$156,696	
		$18,591,527	
Construction Manager Fee	3.00%	$557,748	
Sub-Total		$19,149,273	
Performance and Payment Bond		$106,393	
NM Gross Receipts Tax		$1,284,062	
Project Totals		**$20,539,728**	

Notes:

1. "Equipment" includes residential appliances, commerical kitchen and laundry equipment.
2. "Furnishings" does not include FF&E - which is being designed and purchased by the Owner under a separate contract.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit G
Preconstruction Phase Schedule

Refer to the "Preconstruction Schedule" dated _____ (filename: RVSF007), attached separately but made a part of this Exhibit by reference.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit H
Preliminary Construction Phase Schedule

Refer to the "Preliminary Construction Schedule" dated _____ (filename: _____), attached separately but made a part of this Exhibit by reference.

Amendment No. 1
(Revised December 15, 2004)
To Contract Agreement Between
RainbowVision Santa Fe, LLC and Weis Builders, Inc

In accordance with article 2.2.9 of the Contract Agreement, the Guaranteed Maximum Price (GMP) and Project Schedule are hereby modified to reflect the following:

- The Guaranteed Maximum Price will be Twenty-One Million Five Hundred Thirty Nine Thousand, Seven Hundred Twenty-Eight Dollars ($21,539,728).

- The Construction Start date will be January 3, 2005. Based on that start date:
- The Substantial Completion date for Buildings 16, 17, 18, 19, and 20 will be October 28, 2005.
- The Substantial Completion date for the balance of the project will be April 26, 2006.

Accordingly, the GMP Divisional Cost Breakdown (Exhibit F) shall be modified as per the attached revision, dated September 30, 2004. The revised GMP is based on the following:

- Weis September 15, 2004 "Confirmation of GMP" letter (with attachments)
- Weis September 30, 2004 "Summary of Approved Enhancements"

The Construction Schedule (Exhibit H) shall be as shown in the attached update, dated December 15, 2004.

For:
RainbowVision Santa Fe, LLC

(Signature)

JOY SILVER, PRESIDENT
(Printed Name and Title)
RAINBOWVISION PROPERTIES, INC
MANAGING MEMBER

(Date)

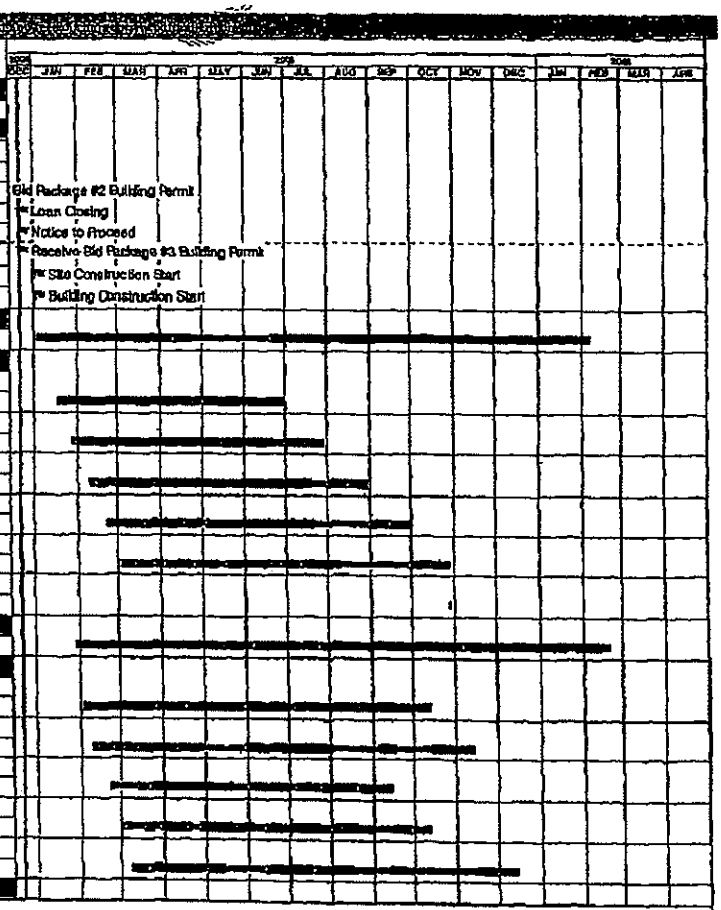
For:
Weis Builders Inc.

(Signature)

PETER WORTHINGTON, VICE PRESIDENT
(Printed Name and Title)

DEC. 15, 2004
(Date)

Act ID	Description	Dur	Early Start	Early Finish
Procurement				
1060	Receive Utilities Permit	0	05AUG04 A	
1120	Receive Grading Permit	0	05AUG04 A	
1080	Receive Bid Package #2 Building Permit	0	02NOV04 A	
1000	Loan Closing	0	22DEC04	
1005	Notice to Proceed	0	22DEC04	
1100	Receive Bid Package #3 Building Permit	0	22DEC04	
1010	Site Construction Start	0	03JAN05	
1020	Building Construction Start	0	03JAN05	
+Site Work				
		285	03JAN05	08FEB06
Condominium Buildings Group 1 - North East				
+Condominium Building 20				
		117	18JAN05	29JUN05
+Condominium Building 18				
		130	28JAN05	29JUL05
+Condominium Building 19				
		144	09FEB05	30AUG05
+Condominium Building 17				
		158	21FEB05	28SEP05
+Condominium Building 16				
		171	03MAR05	28OCT05
+Closeout/Turnover Group 1 Condominiums				
		0	28OCT05	28OCT05
+Electric				
		276	28JAN05	20FEB06
Buildings Group 2 - South East				
+Independent Living Building 1 - 8 Units				
		180	03FEB05	19OCT05
+Independent Living Building 2 - 4 Units				
		196	09FEB05	14NOV05
+Condominium Building 3				
		147	21FEB05	14SEP05
+Condominium Building 4				
		159	03MAR05	12OCT05
+Independent Living Building 5 - 4 Units				
		201	08MAR05	14DEC05
Buildings Group 3 - South West				



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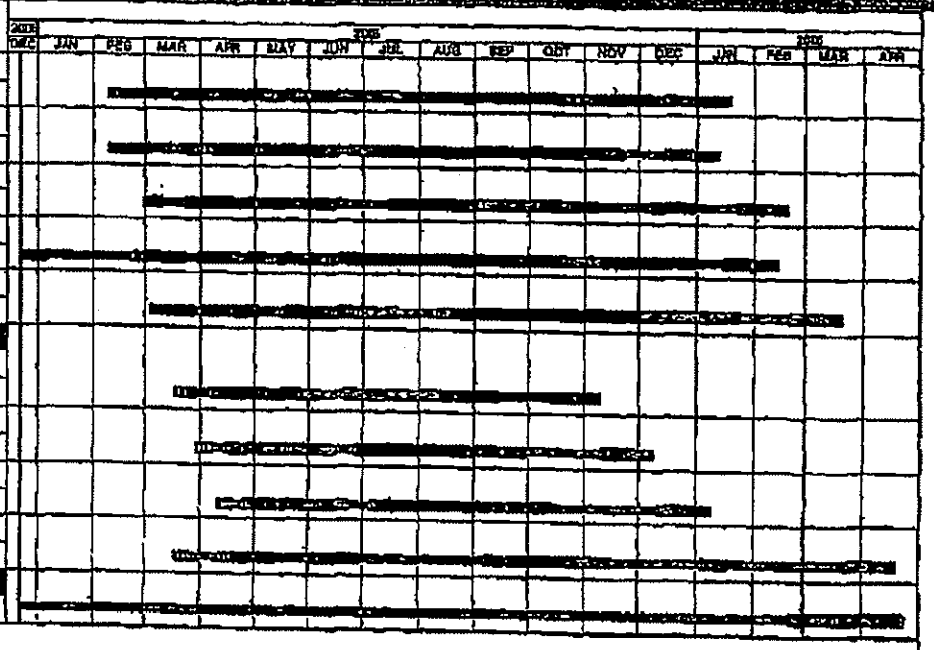
Progress bar
Start milestone point
Finish milestone pgln

Rainbow Vision Retirement Community
Santa Fe, New Mexico
Weis Builders, Inc.

Act ID	Description	Dur	Early Start	Early Finish
	+Independent Living Building 6 - 14 Units			
		247	09FEB05	20JAN06
	+Independent Living Building 7 - 10 Units			
		242	09FEB05	13JAN06
	+Independent Living Building 8 - 8 Units			
		256	28FEB05	20FEB06
	+Independent Living Building 9 - 14 Units			
		299	22DEC04	14FEB06
	+Independent Living Building 10 - 10 Units			
		272	04MAR05	21MAR06
	Buildings Group 4 - North West			
	+Condominium Building 16			
		169	18MAR05	10NOV05
	+Condominium Building 14			
		182	30MAR05	09DEC05
	+Condominium Building 12			
		195	11APR05	09JAN06
	+Independent Living Building 11 - 4 Units			
		283	18MAR05	19APR06
	+Crescent			
		348	22DEC04	24APR06



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Rainbow Vision Retirement Community
Sante Fe, New Mexico
Weis Builders, Inc.

SFC CLERK RECORDED 02/02/2007

CLAIM OF LIEN

To RainbowVision Santa Fe, LLC owner or reputed owner of the premises hereinafter described, and to all who may be concerned:

The Claimant, Weis Builders Inc. claims a lien in the sum One Million, Five Hundred Twenty-Two Thousand, Three Hundred Nineteen dollars ($1,522,319) plus legal fees, costs and interest, upon the following described property, to-wit:

RainbowVision Santa Fe (excluding Buildings #1, 2, 3, 4, 5, 11, 12, 14, 15, 16, 17, 18, 19, 20) located at 500 Rodeo Road, Santa Fe, New Mexico, more particularly described as:

Township 16 N, Range 9 E, Section 11, L.C.E. for RainbowVision condominiums, per Plat 605/24, and bearing uniform property code number 1-053-095-353-509 (excluding Buildings # 1, 2, 3, 4, 5, 11, 12, 14, 15, 16, 17, 18, 19, 20),

together with all improvements thereon, for labor/services performed and materials furnished by the claimant in the construction, alteration and repair, of a certain multi-building resort retirement community consisting of nineteen (19) one and two story residential buildings and a combination commercial/residential building (El Centro) situated on the property described above.

After deducting all just credits and offsets claimant's demands are: Unpaid amounts invoiced, including retainage ($1,168,362), unpaid contract balance ($15,685), and unpaid change order requests ($338,272).

The name of the owner or reputed owner of said property is RainbowVision Santa Fe, LLC and the name of the person with whom claimant contracted, for whom claimant performed services or to whom claimant furnished the said materials is RainbowVision Santa Fe, LLC.

The terms, time given and condition of claimant's contract are as shown in the contract documents attached hereto and marked Exhibit "I" and made a part of this claim.

Wherefore, claimant claims a lien upon said property and improvements thereon in the amount stated.

Weis Builders Inc.

By Peter Worthington

Peter Worthington, Vice President

EXHIBIT

2

STATE OF MINNESOTA }
} ss
COUNTY OF HENNEPIN }

Verification

Peter Worthington, of lawful age and upon being duly sworn upon his/her oath, states and verifies as follows: that he/she has read the foregoing Claim of Lien and understands the contents thereof; that the matters and things contained therein are true and correct to the best of his/her knowledge, information and belief.

SUBSCRIBED AND SWORN TO before me this 30th day of Jan, 2007

My Commission Expires:
4/31/08

Notary Public

MARY F KLEIN
Notary Public
Minnesota

SFC CLERK RECORDED 02/02/2007

CLAIM OF LIEN
PAGES: 45

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

Hereby Certify That This Instrument Was Filed for Record On The 2ND Day Of February, A D., 2007 at 11.45 And Was Duly Recorded as Instrument # 1469461 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy _____ County Clerk, Santa Fe, NM

COUNTY CLERK
VALERIE ESPINOZA
SANTA FE, NEW MEXICO

AIA® Document A121™CMc – 2003 and AGC Document 565

Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor

SFC CLERK RECORDED 02/02/2007

AGREEMENT
made as of the Twenty Eighth day of April in the year of Two Thousand and Four
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

RainbowVision Santa Fe LLC
4001 Office Court Road,
Suite 403
Santa Fe, NM 87505

and the Construction Manager:
(Name and address)

Weis Builders, Inc.
7645 Lyndale Avenue South
Minneapolis, MN 55423

The Project is:
(Name, address and brief description)

RainbowVision Santa Fe Retirement Community
500 Rodeo Road at Antigua
Santa Fe, NM 87505

The Architect is:
(Name and address)

Lloyd & Associates Architects
301 N. GuadalupeSuite 104
Santa Fe, NM 87501

The Owner and Construction Manager agree as set forth below:

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

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

The 1997 Edition of AIA® Document A201™, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™–1997, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™–1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™–1997 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

§ 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

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§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of

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the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

.2 A list of allowances and a statement of their basis.

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

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(1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
(2) the Owner's first authorization to the Construction Manager to:
(a) award a subcontract, or
(b) undertake construction Work with the Construction Manager's own forces, or
(c) issue a purchase order for materials or equipment required for the Work.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™–1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

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ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™–1997, the Architect does not have such authority.

§ 3.3 ARCHITECT

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The Owner shall authorize and cause the Architect to provide Additional Services , requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be

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provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS
The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION
§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

The Construction Manager's fee for Preconstruction Phase Services shall be Seven Thousand Dollars ($7,000), in accordance with Weis's 1/22/03 letter of intent.

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond April 1, 2004 in accordance with Weis's 12/22/03 letter of intent.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 4.2 PAYMENTS
§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable Thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

Interest rate shall be 4% above US Bancorp Prime Rate.
(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

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§ 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

Base Fee will be Three percent (3.0%) of the Cost of the Work as defined in Article 6. For changes in the Work not associated with any " Resident Upgrade Packages" that are to be offered on a unit-by-unit basis, the fee for additive changes will be 3.0% and for deductive changes the fee will be 0.0%.

5.1.2

In addition to the basic fees in 4.1.1 and 5.1.1 above, the Owner shall pay the Construction Manager a Resident Upgrade Fee equal to 15% of the cost of the work, tother with such reasonable administrative costs that the Construction Manager will incur directly related to the performance of such work, associated with the Resident Upgrade Packages that the Owner is planning to offer. It is the intent that a limited number of such Upgrade packages will be offered by the Owner, and that once the scope and cost for the upgrades being considered is established, the Owner and Construction Manager will incorporate by Amendment to this Contract the terms and conditions pursuant to which the Construction Manager shall perform such work. It is intended that the Construction Manager will establish a lump sum price per unit type for each Upgrade Package to be offered, and that said lump sum price shall include the fee and administrative costs described above, as well as define the date for each unit by which the Owner must direct the Construction Manager to proceed with the Upgrade. Unit upgrades for which direction to proceed is given after the agreed upon date, or which reflect a deviation in scope from the defined Upgrade Packages will be evaluated separately, and a cost and time adjustment proposed, by the Construction Manager.

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. At time of Final Completion, any costs savings shall be returned 100% to the Owner and 0% to the Construction Manager.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.3 CHANGES IN THE WORK

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™–1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™–1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™–1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

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§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

"Article 5.4: Commencement and Completion has been added. See Exhibit A."

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement. To the extent that some of the Construction Manager's supervisory and administrative personnel located at the Construction Manager's main office provide service to the project, a portion of their wages and salaries will be included in the cost of work and will be reimbursed in accordance with Exhibit C.

Classification	Name

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed,

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whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds. *(If charges for self-insurance are to be included, specify the basis of reimbursement.)*

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™–1997 or other provisions of the Contract Documents.

.6 Data processing costs related to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

.10 All premiums (without markup) and deductibles associated with Builder's Risk insurance provided by the Construction Manager at the Owner's request.

.11 All premiums (without markup) and deductibles associated with providing professional liability insurance for the mechanical and electrical design services for the condominiums and IL units.

§ 6.1.7 OTHER COSTS

.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager except, however, where conditions requiring such action were caused by or are the result of the Construction Manager's negligence:

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.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™–1997.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA or A201™–1997 other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

.6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

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

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 See Exhibit A for revised Accounting Records requirements.

ARTICLE 7 CONSTRUCTION PHASE

§ 7.1 PROGRESS PAYMENTS

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

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

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§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™–1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee, less retainage of Five percent (5.00%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five percent (5.00%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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7.1.8.1 As an alternative means of achieving the 5% retainage described in 7.1.7 and 7.1.8 above, the Construction Manager and the Subcontractors may allocate a portion of their respective contract amounts to a "Final Completion" line item within each firm's schedule of values. The portions of each contract so allocated shall be equal to the 5% retainage stipulated. Billing against any such "final completion" line item in a schedule of values will be allowed only under the same circumstances as otherwise defined in the contract documents for the reduction or release of retainage.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™–1997 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™–1997 . The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™–1997.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's

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accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

(Paragraph deleted)

None

8.1.2 Insurance provided will be per the construction Manager's standard policy. The Construction Manager will provide the Owner with a statement of the additional premium cost (if any) associated with other insurance coverage as the Owner may want to consider. If the Owner elects to require the Construction Manager to provide other coverage or limits, then the contract will be adjusted accordingly.

§ 8.1.3

(Paragraph deleted)

§ 8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:

$10,000 Deductible Per Occurrence

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§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager shall (Insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to One hundred percent (100.00%) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner after the contract is executed and three days before the commencement of any Work at the Project site. Further, Construction Manager shall deliver a binding commitment for the issuance of such bonds at least two weeks prior to the estimated date for the closing on Project financing. In the event of any early start as identified in paragraph 4.2.1.1 Owner may require Construction Manager to provide such bonds. Owner shall provide Construction Manager with 10 days notice of such requirement and stipulate in such notice the time for providing same, and the amount of coverage required by owner.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™–1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™–1997, *General Conditions of the Contract for Construction*.

§ 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 9.2.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™–1997, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™–1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for

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Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager.

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™–1997.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™–1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™–1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

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11.1 thru 11.4
See Exhibit A

11.5
It is understood and agreed that the GMP is for the total cost of the work and that cost over-runs from one line item can be offset by cost savings from another line item.

11.6
All personnel listed in Exhibit C as a "Reimbursable as a cost of the work" shall be included in the cost of the work per Article 7.2, subject to the GMP per Article 6.1.2.2.

11.7
The following procedure is agreed to by Owner and or Owner's lender and Title Company in the event of a lien being filed by one of the Contruction Manager's Vendors and/or Vendor's Vendor(s): At the Construction Manager's sole discretion either 1. Construction Managershall make a cash deposit equal to 150% of each lien amount in separate escrow account held by Owner's Title Company on behalf of the; Construction Manager or 2. The Construction Manager may provide a lien transfer bond for the amount of the lien. Upon said deposit being made or lien bond being provided by Construction Manger, Owner and or Owner's Lender, and Title Company shall immediately disburse to Construction Manager any monies owed to Construction Manager under the terms of this contract.

11.8
Owner and Construction Manager agree to the following punch list procedure for each phase of the project:
1. Prior to issuance of temporary of Full Certificate of Occupancy by City, Owner and/or Owner's designated representative(s) shall prepare one original interior and exterior punch list.
2. Within 7 calendar days after completion punch list work by Construction Manager, Owner and/or Owner's representative(s) will re-inspect to confirm original punch list items are complete.
3. New items will not be added to the original punch list at any time except for items which are substantial (i.e. no hot water) and thus were obviously missed during original punch list items.
4. Any item(s) not included in original punch list shall be considered warranty item(s).
5. Warranty items shall not be considered outstanding punch list items and thus shall not be subject to withholding of final payments.

11.9
If a discrepancy occurs within this Agreement and/or between this Agreement and other contract documents, it is understood and agreed that Article 11 of this Agreement, the balance of this Agreement, and Exhibits "A", "B", "C" and "D"(in that order) shall govern.

11.10
If interest costs occur per Paragraph 4.2, the cost shall be reimbursed by issuance of an Owner Change Order.

11.11
Architect shall return all submittals (i.e. shop drawings) to Contractor within 10 working days of date received from Contractor.

11.12
Modification and/or extension of project completion date due to "weather days" shall be as outlined in Exhibit "D" attached hereto.

11.13
The following Exhibits, attached hereto, form part of the Contract Documents:
Exhibit A: Modifications to the A121CM
Exhibit B: Supplementary Conditions
Exhibit C: Personnel Billing Rates and Matrix

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Exhibit D: Definition of Weather Days.
Exhibit E: Project Scope and Budget Summary
Exhibit F: Preliminary Divisional Cost Breakdown
Exhibit G: Pre-Construction Phase Schedule
Exhibit H: Preliminary Construction Phase Schedule

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

OWNER	CONSTRUCTION MANAGER
(Signature)	(Signature)
JOE SILVER PRESIDENT	PETER WASHINGTON, VICE PRESIDENT
(Printed name and title)	(Printed name and title)
MAY 1, 2004	APRIL 29 2004
Date	Date
ATTEST	ATTEST

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit A
Additional Provisions/Modifications based on the AIA A121CMC (2003 Edition)

5.4 COMMENCEMENT AND COMPLETION

Add the following paragraphs:

5.4.1 The date of commencement is the date from which the Contract Time of subparagraph 5.4.2 is measured; it shall be the date of the giving of the Notice to Proceed (the "Commencement Date"). The Owner shall issue the Notice to Proceed within ten calendar days of the last to occur of all of the following (the "Conditions to Commencement"): (i) closing of financing acceptable to Owner, sufficient in an amount to satisfy the Owner's financial obligations hereunder, and (ii) receipt of all permits and approvals necessary to allow commencement and continuation of construction. In no event shall the Construction Manager commence any work on site by placing materials at the site or by conducting other Work at the site until a Notice to proceed has been given.

The immediately aforementioned notwithstanding, Construction Manager and Owner acknowledge that prior to receiving a Notice to Proceed the Construction Manager may be required to enter into certain other subcontracts, issue purchase orders, or make similar commitments which, if the Project were not to proceed would result in the incurrence, by Construction Manager of certain costs, financial penalties, or other like or similar expenses. Owner agrees to reimburse Construction Manager all such costs, penalties, or similar expenses, so long as, and only to the extent that Construction Manager has received Owner's written approval prior to the incurrence of such costs, and/or the entering into such subcontracts, authorization of such purchase orders or making such similar commitments. Any activity conducted hereunder shall in no way effect the dates established for substantial completion for each phase as shall be provided for in Amendment No. 1 hereto.

5.4.2 It is anticipated that the Work is to be completed in phases so as to permit residents of the Project to move in on a phased basis (each of which shall be referred to as a "Phase").

.1 Substantial Completion of each Phase is to occur on or before an agreed date. The agreed dates for each Phase shall established by Amendment No. 1 to this Agreement at the time the GMP is established, which shall be an agreed upon number of calendar days from the Commencement Date. Once established each of these days shall be measured from the Commencement Date and may only be extended in accordance with the Contract Documents.

.2 Each date by which Substantial Completion of a Phase must occur pursuant to the Contract Documents shall be referred to as a "Phase Completion Deadline". The period of time from the Commencement Date to the applicable Phase Completion Deadline shall be referred to as the "Phase Contract Time".

.3 The Owner and the Construction Manager acknowledge that if the Construction Manager fails to achieve substantial completion of a Phase before the applicable Phase Completion Deadline, the Owner will suffer damages which are difficult to ascertain. However, the Owner and the Construction Manager agree that the degree to which the Owner will be damaged by the Construction Manager's failure to substantially complete a particular Phase of the Project within the Phase Contract Time generally will decrease as the overall Project nears Substantial Completion. Accordingly, the Construction Manager agrees to pay the Owner as liquidated damages with respect to each particular Phase, and not as a penalty, for each calendar day that passes after the Phase Completion Deadline has expired for the particular Phase of the Project, until the date that the Construction Manager achieves Substantial Completion of that particular Phase, an amount equal to the portion of the GMP allocable to that particular Phase times the construction financing daily interest for Project (the "Stipulated Damage

Amount"). Any liquidated damages payable by the Construction Manager as to a particular Phase shall then be determined by multiplying the Stipulated Damage amount by each day of delay. The Stipulated Damage Amounts for each phase shall be established by an amendment hereto at the closing for financing on the Project.

.4 For purposes of determining that portion of the GMP allocable to a particular Phase, the following method of calculating same will be utilized:

(i) Reasonably determine that amount of the total GMP which generally applies to construction of the Project (as a whole) by adding the sum of the following amounts contained within the GMP: (Specific amounts to be determined when GMP is established by Amendment to the Contract.)

Site Development	$
General Conditions	$
Construction Manager's Fee	$
Other	$
Total	$

(ii) Subtract total in (i) above from the total GMP to determine the "remaining GMP".

(iii) Utilize the approved Schedule of Values and construction costing information to calculate the percentage of the cost of a particular Phase to the "remaining GMP" amount as determined in (ii) above.

(iv) Apply the percentage from (iii) above for the particular Phase(s) to the GMP.

.5 The Stipulated Damage amount for each Phase is intended to be cumulative of the other Phases. Accordingly, if the Phase Completion Deadline for more than one (1) Phase shall have elapsed without the applicable Phases having been substantially completed, then the Stipulated Damage Amount for each Phase not so substantially complete shall be due and owing by the Construction Manager to the Owner. The Owner may collect the Stipulated Damage Amounts by withholding them from payments due the Construction Manager or by separate demand. The Stipulated Damage Amounts provided herein shall be in lieu of all other claims, costs, losses, damages and/or expenses that the Owner might otherwise have against the Construction Manager by reason of its failure to achieve Substantial Completion before the relevant Phase completion Deadline, whether arising from contract or tort, or actual, direct, indirect or consequential damages, and the Owner hereby releases the Construction Manager therefrom.

.6

.1 The Construction Manager agrees that final completion of each Phase of the Work shall occur as soon as possible after Substantial Completion of the Phase, but no later than thirty (30) calendar days after the date on which Substantial Completion of that Phase has occurred, as evidenced by the Architect's Certificate of Substantial Completion. Final payment as to a Phase shall be due upon final completion of such Phase.

.2 Owner acknowledges that there may be certain items which may be on order that, through no fault of the Construction Manager, may not arrive and/or otherwise be available for incorporation into the Work within said thirty (30) day period. To the extent that Owner, in Owners sole discretion, accepts a Phase as having achieved final completion, even though such items remain outstanding, Owner may, (a) acknowledge such acceptance, and (b) withhold up to one and one half (1.5) times the total cost (as determined by the Construction Manager) for each Phase, or $5000 for each Phase (whichever is greater), of such Work which remains incomplete or unincorporated.

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.3 Further, it is the intent that outstanding items described in 5.4.2.6.2 are to be secured and installed as quickly as possible – preferably within five (5) days after the Construction Manager receives those items. It is acknowledged that some items may be more significant than others in terms of the operation or marketability of the project. It is also acknowledged that unless determined otherwise, the costs incurred by the Construction Manager for procuring, expediting and installing the items covered by 5.4.2.6.2 are reimbursable costs as defined under Article 6 of the Contract. Accordingly, it may be less costly for the Owner, and less disruptive to the operation of the facility, to have several items accumulated and installed at one time rather than have each item installed as it is delivered. Therefore, for each item outstanding as of Substantial Completion, within five (5) days the Construction Manager shall provide the Owner, in writing, with a proposed plan indicating the expected delivery date and proposed installation date for each item. The Owner and Construction Manager will jointly review (and revise as needed) said plan and reach an agreement on the plan. The Construction Manager will report to the Owner on a weekly basis of the status of the items remaining to be installed, and immediately notify the Owner of any change in delivery date or installation date due to unforeseen procurement or delivery problems. If after receiving an outstanding item the Construction Manager fails to commence the Work within five (5) days after agreed upon commencement date, or subsequently fails to complete the Work in accordance with the agreed upon schedule, the Owner may exercise its right to carry out the work as provided in section 2.4 of the A201 General Conditions

.4 The provision stated above for withholding 1.5 times the cost of items outstanding at the time of Substantial Completion does not apply to any Upgrade Options initiated by the Owner subsequent to the decision date established by the Construction Manager for each upgrade option proposed for a given residential unit.

.7 Except for the portions of the project which the Owner has requested completion and occupancy prior to the completion of the Commons Areas in the El Centro building, it is the intent that when developing the Phase Completion Deadlines described in 5.4.2.1 and 5.4.2.2 above, for the purposes of determining what, if any, stipulated damage amount may be owed by Construction Manager, no phase shall be deemed to have achieved Substantial Completion until such time as (1) the common areas (as defined in Amendment No. 1) portion of the Project shall have achieved Substantial Completion or (2) the Owner agrees to deem the phase Substantially Complete or (3) the Owner takes beneficial occupancy of all or part of the phase. Further and accordingly, when establishing the completion dates for each phase as provided for herein by amendment hereto, such amendment shall also provide that no phase shall be deemed complete for the purposes hereof unless (1) and/or until the commons area portion of the Project shall have attained substantial completion, (2) the Owner has agreed to deem the phase Substantially Complete, or (3) the Owner takes beneficial occupancy of all or part of the phase.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be satisfactory to the Owner and Owner's lender. The Owner and the Owner's accountants and the lender and lender's accountant or consultants shall be afforded reasonable access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement and the Project, (collectively "the records") and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. All Records shall be maintained in accordance with generally accepted accounting principles, consistently applied. There shall be an "open book" policy, in effect at all times with regard to all Records relative to the project

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maintained by either the Construction Manager or the Owner, or anyone on their behalf, and each party shall have full and complete access to said Records maintained by the other at all reasonable times. The Construction Manager shall require all Subcontractors and Sub-Subcontractors retained on a cost-plus basis to retain Records and permit the same access by Owner as is required of the Construction Manager under this Article 6.4.

6.4.1.1 If the Owner, Owner's accountants, Lender or Lender's accountants elect to perform an audit of "the records" maintained by Construction Manager, said audit shall be performed within six (6) months of the Final Completion of the project. This stipulation does not affect the Construction Manager's obligation to maintain "the records" for the time period noted in 6.4.1.

6.4.2 If, at any time during construction, any inspection by the Owner or the Lender of the Construction Manager's Records or any other data relating to the contract documents reveals an overcharge or undercharge by the Construction Manager as confirmed by an independent auditor, the next Application for Payment shall be appropriately adjusted by the amount of such overcharge or undercharge and related Fee.

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

Add the following:

7.1.11 To the extent of payments received by the Construction Manager from the Owner, the Construction Manager warrants the real property on which the Project is located will remain free of any legitimate and proper claims of lien arising from the Work performed by or through the Construction Manager. If any such liens are properly recorded, the Construction Manager shall have fifteen (15) business days from its receipt of written notice by the Owner or Owner's agent (including Title company) of such recording within which to discharge or secure by cash deposit or by construction lien transfer bond any such claims of lien. If the Construction Manager fails to discharge or otherwise secure such claim of lien within said time period, the Owner shall be entitled to satisfy the lien or take whatever action it deems appropriate to remove the lien from its property. All reasonable expenses and costs, including reasonable attorney's fees, incurred by the Owner after the abovementioned fifteen (15) day period to effect the discharge, securing and/or removal of any such claims of lien shall be promptly reimbursed to the Owner by the Construction Manager.

7.1.12 Concurrently with each Application for Payment, Construction Manager will deliver to Owner lien waivers (which may be conditioned upon payment) waiving all lien rights in respect of the Project, executed by Construction Manager, and executed by Subcontractors and suppliers covering amounts paid on their account or to be paid with funds received from such Application for Payment. All lien waivers shall be in form and substance satisfactory to Owner and the Owners Lender(s). Additionally, the Construction Manager shall provide further evidence regarding application of each progress payment to payment of all Subcontractors and suppliers providing services or material in respect of the Project, and shall comply with such other reasonable requirements as the Owners Lender(s) may impose with respect to obtaining advances of funds be applied to each Application for Payment."

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ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION

Add the following the following subparagraphs to 9.1.1:

.1 Claims between the parties to this Agreement shall be resolved as set forth below. At all times, the parties shall approach the dispute resolution process in good faith.

.2 In the event of a Claim between the parties, the parties shall promptly meet in good faith to resolve the Claim informally before invoking the dispute resolution procedures outlined elsewhere in the Contract Documents, including the A201 General Conditions and Supplementary Conditions, and below. If the parties are not able to quickly resolve the claim, either party may request participation by the Architect. Both parties shall promptly submit a written summary of its position to the Architect. Upon receipt of both summaries, the Architect shall immediately convene a formal meeting with the parties to further discuss the Claim. If the Claim is not resolved within three business days after the commencement of such meeting, either party may then commence the dispute resolution process defined in the Contract Documents.

.3 If the informal dispute resolution efforts outlined in 9.1.1.2 are not successful, then the dispute resolution procedures outlined in the balance of the Contract Documents. Any mediation conducted pursuant to this Paragraph 9.1 shall be heldin Santa Fe, unless the parties mutually agree otherwise.

.4 Intentionally omitted
.5 Intentionally omitted

.6 Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

.7 Intentionally omitted
.8 The arbitration shall be held in Santa Fe.

.9 Notwithstanding anything herein to the contrary, if (1) the Claims involve a proposed, net aggregate payment or reimbursement in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose, an "interested person or entity" means any person or entity if (a) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (b) the interested person or entity is so situated that the disposition of the claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as other wise permitted by the Contract Documents or by law.

ARTICLE 11
OTHER CONDITIONS AND SERVICES

11.1 The Construction Manager recognizes that any Lender involved in financing the Project will have requirements pertaining to this Agreement. The Construction Manager agrees to cooperate with and assist the Owner and the Architect in amending and supplementing the Contract Documents to conform to reasonable and customary requirements of any Lender (to the extent such requirements are acceptable to the Owner). However, the Construction Manager shall not be responsible for actually preparing amendments or supplements to the Contract Documents for any reason at any time. Such amendments or supplements may include, without limitation, provisions:

A. Naming any Lender as an additional insured on the Construction Manager's bonds and insurance policies and providing notice to any Lender of termination, cancellation or material modification of such policies.

B. Requiring approval of Applications for Payment by a consultant designated by a Lender prior to payment.

C. Agreeing not to amend Contract Documents without the reasonable and timely consent of the Lender.

D. Requiring approval of Change Orders by the Lender, provide that Lender approval will be provided on a timely basis and the Owner will use its best efforts to secure such timely approval.

E. Requiring notice of the Owner's default to the Lender, with a Lender having the right to cure, and requiring continued performance by the Construction Manager, provided that the Lender assumes all contract obligations of the Owner.

F. Subordinating any lien rights of the Construction Manager to rights of the Lender.

G. Requiring copies of all written notices to be sent to the Lender.

H. Granting the Lender the right to inspect the work and to examine records pertaining thereto.

I. Recognizing the pledge of the Owner's rights under Contract Documents to the Lender.

J. Requiring the Construction Manager to acknowledge, on the Lender's request, whether or not the Owner is in default of its obligations under the Contract.

K. Requiring the Construction Manager to assist the Owner in preparing and submitting reports and information concerning the Work as may be reasonably required by the Lender.

11.2 Nothing contained in Paragraph 11.2 or Paragraph 11.3 is intended to derogate from any other rights to terminate this Contract that may be granted the Construction Manager elsewhere in this Contract, including, but not limited to, the provisions of Article 2 and Article 14 of the General Conditions and Article 10 of this Agreement.

11.3 The Construction Manager may perform all or any part of the Work with its own forces, or through an Affiliate, provided that (1) the Construction Manager secures at least two competitive bids with respect to the work Construction Manager intends to perform (2) the Owner consents thereto in writing, which consent shall not be unreasonably withheld, after full disclosure by the Construction Manager to the Owner of the affiliation or relationship of the Affiliate to the Construction Manager and (3) any Work performed by an Affiliate shall be covered in a separate agreement between the Construction Manager

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and the Affiliate, which shall satisfy all of the requirements for subcontracts as set forth in Paragraph 5.3 of the General Conditions and which shall be approved by the Owner in writing.

11.4 Any amounts payable hereunder which are not paid when due shall thereafter accrue interest at Wall Street Journal "prime" plus one percent (1%) per annum or at the highest rate allowed under the law of the state where the Project is located, whichever is less.

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RainbowVision Santa Fe/Wels Contract Agreement
Exhibit B
Supplementary Conditions to the AIA A201 General Conditions (1997 Edition)

1. The following Supplementary Conditions shall apply to that certain Standard Form of Agreement Between Owner and Construction Manager (the "Agreement") dated

2. For purposes of these Supplementary Conditions, capitalized terms shall have the meaning given to them in the Contract Documents (as such term is defined in Article 1 of the Agreement), unless otherwise defined in these Supplementary Conditions.

3. The following paragraphs supplement, modify, or amend that certain Contract Document entitled "General Conditions of the Contract for Construction," AIA Document A201, Fifteenth Edition, 1997, Articles 1 through 14 inclusive (the "General Conditions"). Where only a portion of any provision of the General Conditions is supplemented, modified, or amended, the remaining portions of that provision shall remain unaltered and in effect. In the event of any inconsistency between the General Conditions and these Supplementary Conditions, the terms of these Supplementary Conditions shall apply. Hereinafter, all references to the General Conditions shall mean the General Conditions as amended by these Supplementary Conditions.

A. INTENTIONALLY OMITTED

B. PARAGRAPH 1.2.4 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.4 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with quality of the surrounding Work and of the construction of the Project generally.

C. PARAGRAPH 1.2.5 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.5 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

D. INTENTIONALLY OMITTED

E. SUBPARAGRAPH 1.5.1, add at the end of the first sentence: ", unless otherwise identified and incorporated by reference in Agreement."

F. SUBPARAGRAPH 2.2.5 Modify Subparagraph 2.2.5 as follows:

"In addition to the sets the Construction Manager used for bidding, the Owner will furnish a to be agreed upon number of sets of black and white prints of the Drawings and copies of the Project Manual free of charge for execution of the Work. Additional sets may be purchased from the Office of the Architect."

G. SUBPARAGRAPH 3.2.3, delete the second sentence, and add at the end: "If the Construction Manager performs Work knowing it involves such error, inconsistency, omission or difference without such notice to the Architect, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributed to correction."

H. PARAGRAPH 3.3 "SUPERVISION AND CONSTRUCTION PROCEDURES" is hereby supplemented by the addition of the following sub-paragraphs:

3.3.4. The Construction Manager shall carefully check its own work and that of Subcontractors as the Work is being performed. The Construction Manager shall ensure that incorrect or faulty Work is corrected as soon as possible but in any event in a timely manner so as not to impact the project schedule.

3.3.5 During the finishing stages of the project, the Construction Manager shall make frequent inspections of the Work in the presence of the Architect or the Owners Representative and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work. The Construction Manager shall ensure that incorrect or faulty Work is corrected in accordance with 3.3.4.

I. PARAGRAPH 3.4 "LABOR AND MATERIALS" is hereby supplemented by addition of the following Subparagraphs 3.4.3 and 3.4.4:

3.4.4 Should the Owner make reasonable objection, based upon qualifications, fitness, behavior or temperament, to the presence of any personnel of Construction Manager or any subcontractor, such person shall not perform services on the Project site, or otherwise in connection with the Project, without written consent of the Owner.

3.4.5 The Construction Manager shall not change or replace the assigned Project Manager or Superintendent without prior written consent by the Owner.

J. SUBPARAGRAPH 3.5.1, Add to the end: "Construction Manager's warranties shall commence upon Substantial Completion of the Work for each Phase and continue for a period of one year thereafter."

K. PARAGRAPH 3.5 "WARRANTY" is hereby supplemented by the addition of the following sub-paragraphs:

3.5.2. In the event of a claim by the Owner against the Construction Manager under Paragraph 3.5.1. of these General Conditions (or under any other express written warranty made by the Construction Manager) for any item of Work performed under the Contract Documents, the Owner shall give notice (a "Warranty Notice") of the claim to the Architect and the Construction Manager and thereafter, the Architect or Architects authorized representative and the Construction Manager shall inspect the item(s) of Work in question. If following its inspection the Architect determines that any such item is included within the Construction Manager's warranty under the Contract Documents, then:

(a) Upon formal notification from the Architect, the Construction Manager shall have thirty (30) days, notwithstanding any other time period specified in the Contract Documents, to either (1) complete the cure for the item or, for a Longer Cure Item, commence the cure and thereafter diligently proceed to complete the cure, or (2) if the Construction Manager disputes the warranty coverage of the item, commence the

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dispute resolution procedures described in Section 4.3 of the General Conditions.

(b) If upon the expiration of the thirty (30) day period the Construction Manager has failed to satisfy the provisions of either clause (a) (1) or clause (a) (2) immediately above, then the Owner shall have the right to engage a third party Construction Manager of the Owner's sole selection to cure or complete the cure of the warranty item at the Construction Manager's expense.

(c) If the Construction Manager fails to cure an item within the required time and if the item is finally determined by arbitration or, when permitted, judicial proceedings to be covered by any Construction Manager's warranty under the Contract Documents, then the Construction Manager shall be liable for all expenses incurred by the Owner in enforcing its warranty claim including legal and Architectural fees and expenses, an administrative charge of a percentage equal to Construction Manager's fee times the cost to cure the warranty item to cover the Owner's administrative costs to enforce the warranty claim, and, when a third party Construction Manager has been engaged by the Owner under this Paragraph 3.5.2, the costs and expenses of the third party Construction Manager.

L. INTENTIONALLY OMITTED

M. ARTICLE 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES is supplemented by the following replacement language for Subparagraph 3.12.4

3.12.4 Shop Drawings, Product Data, Samples and similar submittals which are required by the Contract Documents to be submitted for Architect's review shall become Contract Documents upon Architect's review and approval. Submittals which are not required by the Contract Documents to be submitted for Architect's review are not Contract Documents.

N. ARTICLE 3.16 "ACCESS TO WORK" is hereby supplemented by addition of the following Subparagraph:

"3.16.2 Representatives of the State Agencies shall have access at all reasonable times to the Work wherever it is in preparation or progress, and the Construction Manager shall provide proper facilities for such access and inspection."

O. PARAGRAPH 4.2.4 "COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION" is hereby supplemented by the additions of the following subparagraphs: Nothing contained herein shall prohibit the Owner's Representative from communicating directly with the Construction Manager for the purpose of receiving information and/or providing the Construction Manager with clarification as to Owner's position with regard to any matters affecting or concerning the Work.

4.2.4.1 The following definitions shall apply to construction communications:

4.2.4.1.1 Contract Document Clarifications: An answer from the Architect, in response to an inquiry from the Construction Manager, intended to make some

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requirement(s) of the Drawings or plans clearly understood. Drawing/plan clarifications may be sketches, drawings, or in a narrative form and are not intended to change any requirements of the Contract Documents. Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.2 Non-Conformance Notice: A Notice issued by the Architect documenting that the Work or some portion thereof has not been performed in accordance with the requirements of the Contract Documents. Payment shall not be made on any portion of the Work for which a Non-Conformance Notice has been issued and the Work not corrected to the satisfaction of the Architect.

Upon receipt of a Non-Conformance Notice the Construction Manager shall provide a written Response to the Non-Conformance Notice within five (5) working days after receipt of the Notice. The Construction Manager's response shall state either (a) the basis of Construction Manager's determination that the Work was performed in accordance with the Contract Documents or (b) the corrective action Construction Manager intends to take, at its sole expense, to correct the non-conforming work

If the Construction Manager disputes issuance of the Notice the Architect has five (5) working days in which to respond by either (a) withdrawing the Notice of Non-Conformance or (b) directing the Construction Manager to correct the Work.

If directed to correct the Work, the Construction Manager shall do so within five (5) working days after receipt of such direction from the Architect, or such other time as may be agreed to with the Architect, without loss of rights for claim recovery or dispute resolution as may be available by the Contract.

4.2.4.1.3 Requests for Information: A written request from the Construction Manager or one of its subcontractors, to the Architect, seeking an interpretation or a clarification of some requirement of the Contract Documents. The Construction Manager shall clearly and concisely set forth the issue for which it seeks clarification or interpretation and why a response is needed from the Architect.

Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.4 Substitution/Or-Equal Submittals: A written request from the Construction Manager to substitute a material, article, device, product, fixture, form, type of construction, or process called for in the Contract Documents with another item that shall substantially equal in all respects to that so indicated or supplied. Each such request shall specifically set forth any manner in which the proposed change does not conform to the Contract Documents and Construction Manager (and any subcontractor initiating the request) warrants that the proposed substitute conforms in all respects with the contract documents except as specifically identified as non-conforming in the request.

4.2.4.1.5 Submittals/Shop Drawings: When required by any technical specification included in these Contract Documents, the Construction Manager shall transmit to the Architect technical submittals, shop drawings, or samples, including supporting catalog cuts, manufacturer's literature, sketches or drawings, calculations, and other pertinent, in sufficient detail to enable the Architect to review the information and determine that the Construction Manager clearly understands the requirements of the Contract Documents. Construction Manager (and any subcontractor initiating a submittal) warrants that all Work and materials depicted in technical submittals, shop drawings and samples shall conform in all respects to the requirements of the Contract Documents, except as otherwise specifically identified as non-conforming.

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4.2.4.1.6 Schedule Submittals: When required by the Construction Schedule Specification of these Contract Documents, the Construction Manager shall submit required schedules, schedule updates, schedule revisions, time impact analysis, etc. for review.

P. INTENTIONALLY OMITTED

Q. SUBPARAGRAPH 4.3.7.2 is hereby revised (and paragraphs 4.3.73 and 4.3.7.4 are added) to read as follows:

4.3.7.2 Weather days: Construction Manager confirms that the Contract Time, Phased Contract Time and the agreed upon dates for same as set forth in Amendment No. 1 to this Agreement are reasonable periods to perform The Work. Construction Manager has included in the work schedule ordinary and normally anticipated lost days due to adverse weather ("weather days") and therefore Construction Manager shall not be entitled to an extension of the Contract Time or Phased Contract Time as a result of weather conditions normally experienced in the greater Santa Fe area unless (1) the Construction Manager is unable to make up for the weather delay by scheduling work for a Saturday in accordance with in 4.3.7.2 below, and (2) the number of weather days lost (and not made up by Saturday work) in that calendar month exceeds the number of weather days provided for in the Contract Time.

4.3.7.3 The Construction Manager's work schedule is based upon a regular five-day work week per calendar week. It is mutually agreed that in the event of a weather day the Construction Manager, before requesting a time extension the Construction Manager will first try to make up that weather day on the next Saturday available during the following 30 calendar days. A Saturday will be considered to be "available" only if all of the following conditions are met: (1) no work has already been scheduled for that day that would interfere with the work being rescheduled, (2) it is not a national holiday, (3) working on that Saturday is allowed by local ordinance, and (4) materials and workforce equivalent to what was scheduled for the lost weekday are available on that Saturday. The Construction Manager will only be required to utilize a Saturday if either (a) the Construction Manager incurs no additional cost in rescheduling work for that Saturday, or (b) the Owner agrees to compensate the Construction Manager (by Change Order) for any additional costs (such as for labor rate differential) the Construction Manager may incur.

4.3.7.4 The requirement stated above for the Construction Manager to utilize a Saturday to make up for a weather delay only applies the number of weather days included in each calendar month as indicated in the following list of Anticipated Lost Days. For every weather day beyond the number included below, the Construction Manager shall be entitled to an equivalent number of days extension to the Contract Time. The Construction Manager may (at the CM's sole discretion) attempt to mitigate the delay utilizing additional Saturdays as outlined in 4.3.7.3, but has not obligation to do so.

For the purposes of this Paragraph the table provided below setting forth the norms/anticipated lost weather days shall be utilized by the parties in determining lost weather days:

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Month	Anticipated Lost Days Due to Adverse Weather
January	1
February	1
March	0
April	1
May	0
June	0
July	1
August	1
September	2
October	2
November	1
December	0

See the Exhibit D "Weather Delays" - attached to the Contract.

R. INTENTIONALLY OMITTED

S. SUBPARAGRAPH 4.6.8, add as new subparagraph :

"4.6.8 Limitations of Arbitration. Notwithstanding anything in the Contract Documents to the contrary, if (1) the Claims involve a proposed, net aggregate payment to owner or Construction Manager in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose an "interested person or entity" means any person or entity if (3) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (4) the interested person or entity is so situated that the disposition of the Claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as otherwise permitted by the Contract Documents or by law."

T. SUBPARAGRAPH 5.2.1, change "promptly" to "within 10 days" in lines 5 and 7.

U. PARAGRAPH 7.3 "CONSTRUCTION CHANGE DIRECTIVES"

Subparagraph 7.3.3.3 is hereby changed to read as follows:

7.3.3.3 The following fees apply to Changes to the Work:

7.3.3.3.1 INTENTIONALLY OMITTED

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7.3.3.3.2 The same markup applied by the subcontractor in the subcontractors base subcontract, which shall be defined in said subcontract and subject to Owner's approval, to the cost of work performed by any subcontractor.

V. INTENTIONALLY OMITTED

W. INTENTIONALLY OMITTED

X. PARAGRAPH 9.8.1. of the General Conditions is hereby deleted in its entirety and the following is substituted in lieu thereof:

9.8.1 "Substantial Completion" of the Project shall be deemed to occur when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and, in addition, all requirements of the Contract Documents for Substantial Completion, including the following conditions, have been fulfilled as follows:

a. A Temporary of Final Certificate of Occupancy has been issued and all construction related approvals, licenses and requirements have been obtained or satisfied for the Project such that the Project may be operated for its intended use.

b. INTENTIONALLY OMITTED

Y. PARAGRAPH 9.8.2. of the General Conditions is hereby deleted in its entirety and the following Paragraphs 9.8.2.1. through 9.8.2.6. are substituted in lieu thereof:

9.8.2.1. When the Construction Manager considers that the Work, or portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Following receipt of the Construction Manager's list, the Architect will make an inspection (the "Initial Punch List Inspection") to determine whether the Work or designated portion thereof is Substantially Complete. Upon completion of its Initial Punch List Inspection, the Architect shall prepare and submit to the Construction Manager and the Owner the Architect's list (the "Punch List") of items to be completed or corrected. For the items on the Punch List, the Architect shall specify:

a. a date (a "Punch Item Date") by which such items shall be completed, which Punch Item Date shall be no more than forty-five (45) days from the date of the Punch List unless the Architect determines that reasonable cause exists for a later completion date; and

b. the cost to complete or correct the items as reasonably determined by the Architect.

The Architect shall expressly state on the Punch List what the Construction Manager must do to achieve Substantial Completion under Paragraph 9.8.1 of the General. If as a result of the Initial Punch List Inspection the Architect determines that Substantial Completion has occurred, the Architect shall prepare a Certificate of Substantial Completion pursuant to Paragraph 9.8.2.5 below.

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9.8.2.2 If the Construction Manager has not given notice that the Work is substantially complete and requested inspection thereof on or before the date for Substantial Completion set by the parties in the Contract Documents, then the Owner may request the Architect to make an Initial Punch List Inspection of the Work to (x) prepare the Punch List pursuant to the provisions of Paragraph 9.8.2.1. above and (y) determine if Substantial Completion has occurred.

9.8.2.3. Upon the request of the Construction Manager prior to the expiration of the relevant Punch Item Date(s) and for good cause shown, the Architect may extend any Punch Item Date(s) for a reasonable period. Following receipt of the Punch List and the Construction Manager's compliance with the requirements of Paragraph 9.8.1. above, the Construction Manager may submit a request for another inspection by the Architect, if necessary, to determine whether Substantial Completion of the Work has been achieved.

9.8.2.4. If the Construction Manager fails to satisfactorily complete any item(s) on the Punch List by the applicable Punch Item Date(s), then the Owner has the right to take over the work in accordance with Section 2.4 of the General Conditions.

9.8.2.5.When the requirements of Paragraph 9.8.1. above have been met and upon the request of either the Owner or the Construction Manager, the Architect shall prepare a Certificate of Substantial Completion, in the form set out in Paragraph 9.8.3 below, which shall establish the date of Substantial Completion and shall establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise specifically stated in the Contract Documents or in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Construction Manager for their written acceptance of responsibilities assigned to them in such certificate.

Z. INTENTIONALLY OMITTED

AA. In addition to the provisions of Paragraph 9.10 Final Completion shall not have been deemed to have occurred until the date upon which all of the following have occurred:

a. INTENTIONALLY OMITTED

b. Delivery of conditional or unconditional lien waivers from each person who performed work at or provide or fabricated materials in connection with the Work (including all subcontracts executed in connection therewith), other than from those persons whose claims are being contested by Construction Manager in good faith and for which Construction Manager has provided to Owner a bond or security in an amount reasonably acceptable to Owner, and

c. Issuance and obtaining of a final, unconditional certificate of occupancy and all construction-related approvals, licenses, and requirements for the Project enabling it to be occupied and operated for its intended use.

BB. SUBPARAGRAPH 9.10.4.1, after "Claims" add: "previously made in writing and identified by Owner as unsettled at the time of final payment."

CC. Paragraph 10.1.1 add the following: "Construction Manager shall prepare and submit to Owner for Owner's approval a comprehensive safety program. Further, Construction Manager shall provide written verification and certification in a form satisfactory to the

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Owner, that all subcontractors have familiarized themselves with the safety program and agreed to abide by said program and training regimen thereunder.

DD. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." In the first line of Subparagraph 11.1.1, following the work " companies," insert the following:

", acceptable to the Owner,."

EE. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." Add the following to subparagraph 11.1.3:

"Certificates called for herein shall be furnished in duplicate and shall specifically set forth evidence of all coverage required by 11.1.2 and the Construction Manager shall furnish to the Architect copies of all endorsements that are subsequently issued amending coverage or limits."

FF. SUBPARAGRAPH 13.4.3, add as a new subparagraph:

"In the event of any litigation between the parties, the prevailing party shall be entitled to reimbursements for all reasonable attorneys' fees, expert fees, court costs, and all other third-party costs of the litigation incurred by the prevailing party to the extent allowed by law."

GG. PARAGRAPH 13.5 "TESTS AND INSPECTIONS" is hereby supplemented by the addition of the following subparagraph:

"13.5.7 When work has been installed contrary to any Contract requirements and the Construction Manager requests the privilege of testing in lieu of removal, such testing shall be at the Construction Manager's expense."

HH. INTENTIONALLY OMITTED

II. Add the following new Article:

ARTICLE 15: REQUESTS FOR INFORMATION

15.1.1 In the event that the Construction Manager or its subcontractor, at any tier, determines that some portion of the Drawings, Specifications, or other Contract Documents requires clarification or interpretation by the Architect, the Construction Manager shall submit a Request for Information in writing to the Architect. Requests for Information may only be submitted by the Construction Manager and shall be only submitted on the Request for Information Forms provided by the Architect. The Construction Manager shall clearly and concisely set forth the issue for which clarification and interpretation is sought and why a response is needed from the Architect. If the Request for Information is being used to request confirmation of an interpretation or understanding of a requirement, the Construction Manager shall set forth that interpretation or understanding of the requirement along with reasons why such an understanding was reached.

15.1.2 The Architect will review all Requests for Information to determine whether they are Requests for Information within the meaning of this term. If the Architect determines

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that the document is not a Request for Information, it will be returned to the Construction Manager, unreviewed as to content, for resubmittal on the proper form and in the proper manner. In either case, the Architect must reply to RFI in writing within the time requested by the Construction Manager, or three (3) working days, whichever is earlier.

15.1.3 Responses from the Architect are not intended to change any requirement of the Contract Documents. In the event the Construction Manager believes that a response to a Request for Information will cause a change to the requirements of the Contract Document, the Construction Manager shall immediately give written notice to the Architect in accordance with Section 4 of the General Conditions stating that the Construction Manager considers the response to be a change in the scope of work or a change to the project schedule..

END OF SUPPLEMENTARY CONDITIONS

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit "C"

Weather Delays

1. A "Work Day" is defined at Monday thru Friday, 7:30 am– 4:400 pm.

2. The occurrence of one or more of the following will constitute a weather delay as indicated:

   a. 0.25" of rain during the workday constitutes one lost workday
   b. 2.0" of snow during the workday constitutes one lost workday
   c. 12" of snow in a 24-hour period constitutes two lost workdays.
   d. Temperature of 5 degrees below zero (Fahrenheit) constitutes one lost workday.
   e. Any drying time required for soil stabilization (as directed by the geotechnical engineer) due to rain or snow will constitute lost work day(s).

3. Weather days will be included in the final schedule approved as part of the GMP proposal to be incorporated into the contract by amendment. The number of weather days included will be in accordance with Section 3.P of Exhibit B. Adjustments to the contract completion dates due to adverse weather will be made in accordance with Section 3.P of Exhibit B.

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit "D"
Personnel Billing Rates

Position	Reimbursable as a Cost of the Work (w/in GMP)	Included in Fee	Notes	Expected to be Full or Part Time	Billing Rate ($/hr)
Field Staff Stationed on Site					
Superintendent	X		1	Full	$70
Project Engineer, QA/QC	X		1	Full	$60
Carpenter	X		2	Full	Varies - local rate
Laborer	X		2	Full	Varies - local rate
Personnel Not Stationed on Site					
Vice President		X			
CFO		X			
Project Manager	X		3	Part	$75
General Superintendent	X		3	Part	$75
Project Coordinator		X			
Safety Director	X		3	Part	$50
Project Accountant		X			
Pre-Construction Personnel					
Senior Estimator/Pre-Con Services M	X		4	Part	$90
Assistant Estimator	X		4	Part	$60

Notes:

1 Field staff on project site.
2 It is expected that all trade work will be subcontracted. Trade labor rates shown only if need for Gen Conditions.
3 Billed only for time spent on site and traveling to project
4 Billed only for time during pre-construction phase, subject to Pre-construction services billing cap (see Exhibit F).

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit E
Project Scope & Budget Summary

- The Scope of the project includes:
  - 40 Single-story Condominium living units
  - 80 Single-level Independent Living units built in a series of two-story buildings
  - 26 Assisted Living apartments (and related support spaces) constructed on the 2nd level of the central services building
  - Central services building (El Centro) containing commercial kitchen, dinning spaces, activity spaces, administrative and marketing offices, retail spaces, and a spa/wellness center.
  - 13 acres of site development, with some off-site, public improvements
  - Total building area is approximately 183,000 sf.

- Based on a preliminary site plan and building design commissioned by the Owner, the Construction Manager prepared a detailed, preliminary cost report and presented that report to the Owner on February 1, 2004. Based on that scope and cost report, the Owner has established a construction budget of $20,540,000, based on the Preliminary Divisional Cost Breakdown shown in Exhibit F.
- The Owner has contracted with the Architect to complete the design of the project in accordance with the budget stated above. The completion of the design, and related activities is proceeding in accordance with the Preconstruction Phase Schedule prepared and updated regularly by the Construction Manager. See Exhibit G.

- The Construction Manager has also prepared a Preliminary Construction Schedule. See Exhibit H. A final Construction Schedule will be included in the GMP report and made part of the contract by amendment.

- The Owner, Architect and Construction Manager are working together to monitor the completion of the design to ensure meeting the Construction Budget.

- Upon receipt of the Design Development documents, the Construction Manager will, in accordance with contract Section 2.2 prepare a GMP report that will include all of the elements outlined in Section 2.2.4. Prior to submitting the final GMP report, the Construction Manager will review the preliminary cost estimates with the Owner and Architect to determine if any adjustments to scope are required in order to achieve the construction budget stated above. Upon approval by the Owner, the GMP will be incorporated into the contract by amendment, in accordance with Section 2.2.

- During the completion of the design The Construction Manager will continue to meet regularly with the Owner and Architect, and will regularly review the Architect's work in progress to monitor the design as a means to ensure conformance to the construction budget.

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RainbowVision Santa Fe/Weis Contract Agreement
EXHIBIT F

Preliminary Divisional Cost Breakdown

C.S.I. SYSTEMS BREAKDOWN		Total Costs	%
Division 1 - General Conditions		$1,047,401	5.9%
Division 1 - Building Permit Allowance		$184,620	1.0%
Division 2 - Site Construction		$1,534,319	8.7%
Division 3 - Concrete		$965,149	5.5%
Division 4 - Masonry		$486,508	2.8%
Division 5 - Metals		$439,822	2.5%
Division 6 - Woods & Plastics		$2,609,476	14.8%
Division 7 - Thermal & Moisture Protection		$969,353	5.5%
Division 8 - Doors & Windows		$771,105	4.4%
Division 9 - Finishes		$3,286,198	18.6%
Division 10 - Specialties		$592,969	3.4%
Division 11 - Equipment (See Note 1)		$445,320	2.5%
Division 12 - Furnishings (See Note 2)		$49,196	0.3%
Division 14 - Conveying		$230,919	1.3%
Division 15 - Mechanical		$2,410,820	13.7%
Division 16 - Electrical		$1,636,100	9.3%
Sub-Total		$17,661,276	100%
Escalation - For 2004	0.0%	-	
Sub-Total		$17,661,276	
Est./Const Contingency - El Centro	5.0%	$243,521	
Est./Const Contingency - Balance	3.0%	$383,726	
Sub-Total		$18,288,523	
Builders Risk Insurance	0.8%	$146,308	
Liability Insurance	0.85%	$156,696	
		$18,591,527	
Construction Manager Fee	3.00%	$557,746	
Sub-Total		$19,149,273	
Performance and Payment Bond		$106,393	
NM Gross Receipts Tax		$1,284,062	
Project Totals		**$20,539,728**	

Notes:

1. "Equipment" includes residential appliances, commerical kitchen and laundry equipment.
2. "Furnishings" does not include FF&E - which is being designed and purchased by the Owner under a separate contract.

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RainbowVision Santa Fe/Wels Contract Agreement
Exhibit G
Preconstruction Phase Schedule

Refer to the "Preconstruction Schedule" dated , (filename: RVSF007), attached separately but made a part of this Exhibit by reference.

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit H
Preliminary Construction Phase Schedule

Refer to the "Preliminary Construction Schedule" dated (filename:), attached separately but made a part of this Exhibit by reference.

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Amendment No. 1
(Revised December 15, 2004)
To Contract Agreement Between
RainbowVision Santa Fe, LLC and Weis Builders, Inc

In accordance with article 2.2.9 of the Contract Agreement, the Guaranteed Maximum Price (GMP) and Project Schedule are hereby modified to reflect the following:

- The Guaranteed Maximum Price will be Twenty-One Million Five Hundred Thirty Nine Thousand, Seven Hundred Twenty-Eight Dollars ($21,539,728).
- The Construction Start date will be January 3, 2005. Based on that start date:
- The Substantial Completion date for Buildings 16, 17, 18, 19, and 20 will be October 28, 2005.
- The Substantial Completion date for the balance of the project will be April 26, 2006.

Accordingly, the GMP Divisional Cost Breakdown (Exhibit F) shall be modified as per the attached revision, dated September 30, 2004. The revised GMP is based on the following:

- Weis September 15, 2004 "Confirmation of GMP" letter (with attachments)
- Weis September 30, 2004 "Summary of Approved Enhancements"

The Construction Schedule (Exhibit H) shall be as shown in the attached update, dated December 15, 2004.

For: RainbowVision Santa Fe, LLC	For: Weis Builders Inc.
(Signature)	Pete Whitfle (Signature)
(Printed Name and Title)	PETER WORTHINGTON, VICE PRESIDENT (Printed Name and Title)
(Date)	DEC-15, 2004 (Date)

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EXHIBIT 4

4125

ENDORSED
First Judicial District Court

APR 30 2007

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

RAINBOWVISION SANTA FE, LLC,

Plaintiff,

vs.

NO. D-0101-CV 2007-00010

WEIS BUILDERS, INC.,
PCI CONTRACTORS, INC., and RLA, INC.

Defendants.

and

WEIS BUILDERS, INC.

Third Party Plaintiff,

vs.

HSH NORDBANK AG,
SIMS RAINBOWVISION LLC,
LOS ALAMOS NATIONAL BANK,
VALLEY NATIONAL BANK,
LES FILE DRYWALL, INC.,
RODGERS PLUMBING AND HEATING CO. INC.,
DOMINGUEZ CARPET AND TILE, INC.,
EKER BROTHERS, INC., and
T L C COMPANY, INC.

Third Party Defendants.

AMENDED THIRD PARTY COMPLAINT

Weis Builders Inc. ("WBI") as Third Party Plaintiff, makes this Third Party Complaint.

1. WBI is a Minnesota corporation duly and validly licensed in the State of New Mexico.

4/30/07

2. HSH Nordbank AG is a lending institution located in New York, NY.

3. Los Alamos National Bank is a banking institution in Los Alamos, New Mexico organized and existing under the laws of the United States of America.

4. Valley National Bank is a banking institution in Espanola, New Mexico organized and existing under the laws of the United States of America.

5. Les File Drywall is a New Mexico corporation with its principal place of business in Albuquerque, New Mexico.

6. Rodgers Plumbing and Heating Co., Inc. is a New Mexico corporation with its principal place of business in Albuquerque, New Mexico.

7. Dominguez Carpet And Tile, Inc. is a New Mexico corporation with its principal place of business in Santa Fe, New Mexico.

8. Eker Brothers, Inc. is a New Mexico Corporation with its principal address in Santa Fe, New Mexico, and its registered agent in Albuquerque, New Mexico.

9. T L C Company, Inc. is a New Mexico Corporation with its principal place of business in Albuquerque, New Mexico.

10. On or about April 28, 2004, WBI and RainbowVision Santa Fe, LLC ("RVSF") entered into a contract under which WBI agreed to provide certain construction services, labor, and materials for work specified in the contract (the "Contract") for the RainbowVision Santa Fe Retirement Community (the "Project"), in Santa Fe, New Mexico, in return for compensation for its services. A true and correct copy of the Contract is being served with this pleading as Exhibit 1 pursuant to Rule 1-009(I) NMRA.

11. RVSF has improperly withheld payment from WBI.

12. RVSF has not paid the retainage to WBI.

13. An unpaid balance of at least $1,522,319, which includes, among other things, the unpaid Contract balance (including retainage) and additional contract adjustments is currently owed to WBI for the reasonable value of its improvements to the Property, together with interest, costs, disbursements, and reasonable attorneys' fees.

14. On or about February 2, 2007, WBI filed a Claim of Lien in the sum of $1,522,319.00, plus legal fees, costs, and interest upon the Property for amounts owed WBI for its improvements to the Property), which Claim of Lien was recorded as Instrument #1469461 in the records of Santa Fe County. A true and correct copy of WBI's Claim of Lien is being served with this pleading as Exhibit 2 pursuant to Rule 1-009(I) NMRA.

15. The Project is located on real property located at 500 Rodeo Road, Santa Fe New Mexico (the "Property") and more particularly described as:

> That certain tract of land within Section 11, Township 16 North, Range 9 East, NMPM per plat 605/24 bearing uniform property code number 1-053-095-353-509

16. WBI specifically excepts from its Claim of Lien the following condominiums:

Unit 110, Instrument No. 1437694, records of Santa Fe County, New Mexico.
Unit 111, Instrument No. 1431907, records of Santa Fe County, New Mexico.
Unit 112, Instrument No. 1431358, records of Santa Fe County, New Mexico.
Unit 113, Instrument No. 1431744, records of Santa Fe County, New Mexico.
Unit 120, Instrument No. 1438953, records of Santa Fe County, New Mexico.
Unit 121, Instrument No. 1432827, records of Santa Fe County, New Mexico.
Unit 122, Instrument No. 1431782, records of Santa Fe County, New Mexico.
Unit 123, Instrument No. 1431910, records of Santa Fe County, New Mexico.
Unit 210, Instrument No. 1434135, records of Santa Fe County, New Mexico.
Unit 211, Instrument No. 1440074, records of Santa Fe County, New Mexico.
Unit 220, Instrument No. 1434302, records of Santa Fe County, New Mexico.
Unit 221, Instrument No. 1432831, records of Santa Fe County, New Mexico.
Unit 310, Instrument No. 1433860, records of Santa Fe County, New Mexico.
Unit 311, Instrument No. 1431746, records of Santa Fe County, New Mexico.
Unit 312, Instrument No. 1432634, records of Santa Fe County, New Mexico.
Unit 313, Instrument No. 1432625, records of Santa Fe County, New Mexico.

Unit 111, Instrument No. 1431907, records of Santa Fe County, New Mexico.
Unit 410, Instrument No. 1434300, records of Santa Fe County, New Mexico.
Unit 411, Instrument No. 1431909, records of Santa Fe County, New Mexico.
Unit 412, Instrument No. 1431357, records of Santa Fe County, New Mexico.
Unit 413, Instrument No. 1432007, records of Santa Fe County, New Mexico.
Unit 510, Instrument No. 1433009, records of Santa Fe County, New Mexico.
Unit 511, Instrument No. 1431899, records of Santa Fe County, New Mexico.
Unit 521, Instrument No. 1431361, records of Santa Fe County, New Mexico.
Unit 1110, Instrument No. 1433094, records of Santa Fe County, New Mexico.
Unit 1111, Instrument No. 1435053, records of Santa Fe County, New Mexico.
Unit 1120, Instrument No. 1438955, records of Santa Fe County, New Mexico.
Unit 1121, Instrument No. 1432829, records of Santa Fe County, New Mexico.
Unit 1210, Instrument No. 1431658, records of Santa Fe County, New Mexico.
Unit 1211, Instrument No. 1432825, records of Santa Fe County, New Mexico.
Unit 1213, Instrument No. 1434137, records of Santa Fe County, New Mexico.
Unit 1410, Instrument No. 1431748, records of Santa Fe County, New Mexico.
Unit 1412, Instrument No. 1434459, records of Santa Fe County, New Mexico.
Unit 1511, Instrument No. 1431362, records of Santa Fe County, New Mexico.
Unit 1512, Instrument No. 1434580, records of Santa Fe County, New Mexico.
Unit 1610, Instrument No. 1406282, records of Santa Fe County, New Mexico.
Unit 1611, Instrument No. 1405660, records of Santa Fe County, New Mexico.
Unit 1612, Instrument No. 1405424, records of Santa Fe County, New Mexico.
Unit 1613, Instrument No. 1405423, records of Santa Fe County, New Mexico.
Unit 1710, Instrument No. 1405659, records of Santa Fe County, New Mexico.
Unit 1711, Instrument No. 1406128, records of Santa Fe County, New Mexico.
Unit 1712, Instrument No. 1405655, records of Santa Fe County, New Mexico.
Unit 1713, Instrument No. 1406704, records of Santa Fe County, New Mexico.
Unit 1810, Instrument No. 1405428, records of Santa Fe County, New Mexico.
Unit 1811, Instrument No. 1405906, records of Santa Fe County, New Mexico.
Unit 1812, Instrument No. 1405564, records of Santa Fe County, New Mexico.
Unit 1813, Instrument No. 1405565, records of Santa Fe County, New Mexico.
Unit 1911, Instrument No. 1406812, records of Santa Fe County, New Mexico.
Unit 1912, Instrument No. 1405657, records of Santa Fe County, New Mexico.
Unit 1913, Instrument No. 1420278, records of Santa Fe County, New Mexico.
Unit 2010, Instrument No. 1405566, records of Santa Fe County, New Mexico.
Unit 2011, Instrument No. 1405190, records of Santa Fe County, New Mexico.
Unit 2012, Instrument No. 1405557, records of Santa Fe County, New Mexico.
Unit 2013, Instrument No. 1405530, records of Santa Fe County, New Mexico.

17. HSH Nordbank AG claims or may claim an interest in the Property subject to the Claim of Lien by virtue of the Real Estate Mortgage with Assignment of Rents and Security Agreement and Fixture Filing recorded with the Santa Fe County Clerk December 21, 2004 as document number 1359754 and by virtue of UCC filings with the Santa Fe County Clerk December 21, 2004, as document number 1359845.

not been remedied, Contract warranty obligations have not been honored, and that substantial completion was not achieved within the times specified in the Contract.

28. The purported damages referred to in Plaintiff RVSF's Complaint, if any, were caused by the conduct of the Third-Party Complaint Indemnity Subcontractors insofar as the Third-Party Complaint Indemnity Subcontractors performed defective work that did not meet industry standards, failed to remedy defective work, failed to honor their warranty obligations, and failed to perform their work within the times specified in the Contract.

29. If RVSF has suffered any loss or damage as alleged in its Complaint or otherwise for work performed for the Third-Party Complaint Indemnity Subcontractors, and such liability is expressly denied by WBI, then such loss or damage was directly caused by the negligence, breach of contract, breach of warranty, products liability, or other fault or improper action of the Third-Party Complaint Indemnity Subcontractors.

30. If WBI is found to have any liability to RVSF for work performed by the Third-Party Complaint Indemnity Subcontractors, and such liability is specifically denied, then WBI is entitled to contribution or indemnity from the Third-Party Complaint Indemnity Subcontractors pursuant to equitable principles and the express and implied terms of contractual agreements.

31. WBI is entitled to entry of judgment in its favor and against the Third-Party Complaint Indemnity Subcontractors, based upon principles of contribution and indemnity, for an amount equal to any liability on RVSF's claims regarding the Third-Party Complaint Indemnity Subcontractors' work, although such liability is denied. WBI is further entitled to entry of judgment in its favor and against the Third-Party Complaint

Indemnity Subcontractors for an amount equal to the attorneys' fees and costs incurred to defend against RVSF's claims.

WHEREFORE, Weis Builders, Inc. respectfully requests the Court to enter judgment as follows:

a. That the Claim of Lien of WBI be adjudged a proper lien on the Property for the amounts set forth above and that it be adjudged paramount and superior to the interest of any others and the same be foreclosed.

b. That any other persons claiming, by through or under them be barred and forever foreclosed of all right, interest, or claim in or to the Property.

c. That the Property be sold under the direction of the Court by a Special Master appointed for such purpose and the proceeds of such sale be applied in the priority provided in the WBI's Claim of Lien and according to law, and the excess, if any, of the proceeds of the sale over the amount due to WBI, after inclusion of costs of sale including Special Master's fees, be distributed according to law and the further order of the Court.

d. That WBI be given the right to become a purchaser at the sale, and that the purchaser at the sale be let into possession of the Property.

e. That WBI have a deficiency judgment for the amount of any deficiency, if the proceeds of such sale are not sufficient to satisfy the amount due and owing WBI as set forth above.

f. That WBI have judgment for all costs expended herein until the time of sale, including costs of sale of the Property pursuant to judgment of

foreclosure, and such other and further relief as the Court may deem just and proper.

g. Judgment in favor of WBI and against Les File Drywall, Inc., Rodgers Plumbing & Heating Co., Inc. Dominquez Carpet and Tile, Inc., Eker Brothers, Inc., and T L C Company, Inc. on WBI's claim against Les File Drywall, Inc., Rodgers Plumbing & Heating Co., Inc. Dominquez Carpet and Tile, Inc., Eker Brothers, Inc., and T L C Company, Inc. for contribution and indemnity, including attorneys' fees and costs incurred to defend against RVSF's claims.

h. As part of any judgment or order in favor of WBI, an award to WBI of its costs, disbursements, and attorneys' fees; and

i. Any such other legal or equitable relief as the Court deems just.

Dated: April 23, 2007

Respectfully submitted,

FABYANSKE, WESTRA, HART, & THOMSON, P.A.

By: _____

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-and-

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ATTORNEYS FOR THE DEFENDANT AND COUNTERCLAIMANT WEIS

Certificate of Service

I certify that a copy of the foregoing was mailed to

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on this 25th day of April, 2007.

Carl A. Calvert

Carl A. Calvert

RV
#C8

AIA® Document A121™CMc – 2003 and AGC Document 565

Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor

AGREEMENT
made as of the Twenty Eighth day of April in the year of Two Thousand and Four
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

RainbowVision Santa Fe LLC
4001 Office Court Road,
Suite 403
Santa Fe, NM 87505

and the Construction Manager:
(Name and address)

Weis Builders, Inc.
7645 Lyndale Avenue South
Minneapolis, MN 55423

The Project is:
(Name, address and brief description)

RainbowVision Santa Fe Retirement Community
500 Rodeo Road at Antigua
Santa Fe, NM 87505

The Architect is:
(Name and address)

Lloyd & Associates Architects
301 N. GuadalupeSuite 104
Santa Fe, NM 87501

The Owner and Construction Manager agree as set forth below:

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

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

The 1997 Edition of AIA® Document A201™, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

EXHIBIT
1

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™–1997, *General Conditions of the Contract for Construction*, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™–1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™–1997 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

§ 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

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§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

~~§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the~~ Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of

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the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

.2 A list of allowances and a statement of their basis.

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents Issuance dates upon which the date of Substantial Completion is based.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

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(1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
(2) the Owner's first authorization to the Construction Manager to:
(a) award a subcontract, or
(b) undertake construction Work with the Construction Manager's own forces, or
(c) issue a purchase order for materials or equipment required for the Work.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™–1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

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ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

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§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials; ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™–1997, the Architect does not have such authority.

§ 3.3 ARCHITECT

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The Owner shall authorize and cause the Architect to provide Additional Services , requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be

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provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS
The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION
§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

The Construction Manager's fee for Preconstruction Phase Services shall be Seven Thousand Dollars ($7,000), in accordance with Weis's 1/22/03 letter of intent.

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond April 1, 2004 in accordance with Weis's 12/22/03 letter of intent.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 4.2 PAYMENTS
§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable Thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

Interest rate shall be 4% above US Bancorp Prime Rate.
(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

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§ 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

Base Fee will be Three percent (3.0%) of the Cost of the Work as defined in Article 6. For changes in the Work not associated with any " Resident Upgrade Packages" that are to be offered on a unit-by-unit basis, the fee for additive changes will be 3.0% and for deductive changes the fee will be 0.0%.

5.1.2

In addition to the basic fees in 4.1.1 and 5.1.1 above, the Owner shall pay the Construction Manager a Resident Upgrade Fee equal to 15% of the cost of the work, toether with such reasonable administrative costs that the Construction Manager will incur directly related to the performance of such work, associated with the Resident Upgrade Packages that the Owner is planning to offer. It is the intent that a limited number of such Upgrade packages will be offered by the Owner, and that once the scope and cost for the upgrades being considered is established, the Owner and Construction Manager will incorporate by Amendment to this Contract the terms and conditions pursuant to which the Construction Manager shall perform such work. It is intended that the Construction Manager will establish a lump sum price per unit type for each Upgrade Package to be offered, and that said lump sum price shall include the fee and administrative costs described above, as well as define the date for each unit by which the Owner must direct the Construction Manager to proceed with the Upgrade. Unit updgrades for which direction to proceed is given after the agreed upon date, or which reflect a deviation in scope from the defined Upgrade Packages will be evaluated separately, and a cost and time adjustment proposed, by the Construction Manager.

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. At time of Final Completion, any costs savings shall be returned 100% to the Owner and 0% to the Construction Manager.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.3 CHANGES IN THE WORK

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™–1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™–1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™–1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

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§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

"Article 5.4: Commencement and Completion has been added. See Exhibit A."

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the ~~construction of the Work at the site or, with the Owner's agreement, at off-site workshops.~~

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement. To the extent that some of the Construction Manager's supervisory and administrative personnel located at the Construction Manager's main office provide service to the project, a portion of their wages and salaries will be included in the cost of work and will be reimbursed in accordance with Exhibit C.

Classification	Name

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed,

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whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds. ~~(If charges for self-insurance are to be included, specify the basis of reimbursement.)~~

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™–1997 or other provisions of the Contract Documents.

.6 Data processing costs related to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

.10 All premiums (without markup) and deductibles associated with Builder's Risk insurance provided by the Construction Manager at the Owner's request.

.11 All premiums (without markup) and deductibles associated with providing professional liability insurance for the mechanical and electrical design services for the condominiums and IL units.

§ 6.1.7 OTHER COSTS

.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager except, however, where conditions requiring such action were caused by or are the result of the Construction Manager's negligence.:

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.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™–1997.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA or A201™–1997 other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

.6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

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

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 See Exhibit A for revised Accounting Records requirements.

ARTICLE 7 CONSTRUCTION PHASE

§ 7.1 PROGRESS PAYMENTS

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

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

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§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™–1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee, less retainage of Five percent (5.00%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five percent (5.00%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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7.1.8.1 As an alternative means of achieving the 5% retainage described in 7.1.7 and 7.1.8 above, the Construction Manager and the Subcontractors may allocate a portion of their respective contract amounts to a "Final Completion" line item within each firm's schedule of values. The portions of each contract so allocated shall be equal to the 5% retainage stipulated. Billing against any such "final completion" line item in a schedule of values will be allowed only under the same circumstances as otherwise defined in the contract documents for the reduction or release of retainage.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™–1997 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™–1997. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™–1997.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's

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accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11 1 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

(Paragraph deleted)

None

8.1.2 Insurance provided will be per the construction Manager's standard policy. The Construction Manager will provide the Owner with a statement of the additional premium cost (if any) associated with other insurance coverage as the Owner may want to consider. If the Owner elects to require the Construction Manager to provide other coverage or limits, then the contract will be adjusted accordingly.

§ 8.1.3

(Paragraph deleted)

§ 8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:

$10,000 Deductible Per Occurrence

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§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager shall (Insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to One hundred percent (100.00%) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner after the contract is executed and three days before the commencement of any Work at the Project site. Further, Construction Manager shall deliver a binding commitment for the issuance of such bonds at least two weeks prior to the estimated date for the closing on Project financing. In the event of any early start as identified in paragraph 4.2.1.1 Owner may require Construction Manager to provide such bonds. Owner shall provide Construction Manager with 10 days notice of such requirement and stipulate in such notice the time for providing same, and the amount of coverage required by owner.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™–1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™–1997, *General Conditions of the Contract for Construction.*

§ 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 9.2.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™–1997, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™–1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for

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Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager.

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain, and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™–1997.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™–1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™–1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

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11.1 thru 11.4
See Exhibit A

11.5
It is understood and agreed that the GMP is for the total cost of the work and that cost over-runs from one line item can be offset by cost savings from another line item.

11.6
All personnel listed in Exhibit C as a "Reimbursable as a cost of the work" shall be included in the cost of the work per Article 7.2, subject to the GMP per Article 6.1.2.2.

11.7
The following procedure is agreed to by Owner and or Owner's lender and Title Company in the event of a lien being filed by one of the Contruction Manager's Vendors and/or Vendor's Vendor(s): At the Construction Manager's sole discretion either 1. Construction Managershall make a cash deposit equal to 150% of each lien amount in separate escrow account held by Owner's Title Company on behalf of the; Construction Manager or 2. The Construction Manager may provide a lien transfer bond for the amount of the lien. Upon said deposit being made or lien bond being provided by Construction Manger, Owner and or Owner's Lender, and Title Company shall immediately disburse to Construction Manager any monies owed to Construction Manager under the terms of this contract.

11.8
Owner and Construction Manager agree to the following punch list procedure for each phase of the project:
1. Prior to issuance of temporary of Full Certificate of Occupancy by City, Owner and/or Owner's designated representative(s) shall prepare one original interior and exterior punch list.
2. Within 7 calendar days after completion punch list work by Construction Manager, Owner and/or Owner's representative(s) will re-inspect to confirm original punch list items are complete.
3. New items will not be added to the original punch list at any time except for items which are substantial (i.e. no hot water) and thus were obviously missed during original punch list items.
4. Any item(s) not included in original punch list shall be considered warranty item(s).
5. Warranty items shall not be considered outstanding punch list items and thus shall not be subject to withholding of final payments.

11.9
If a discrepancy occurs within this Agreement and/or between this Agreement and other contract documents, it is understood and agreed that Article 11 of this Agreement, the balance of this Agreement, and Exhibits "A", "B", "C" and "D"(in that order) shall govern.

11.10
If interest costs occur per Paragraph 4.2, the cost shall be reimbursed by issuance of an Owner Change Order.

11.11
Architect shall return all submittals (i.e. shop drawings) to Contractor within 10 working days of date received from Contractor.

11.12
Modification and/or extension of project completion date due to "weather days" shall be as outlined in Exhibit "D" attached hereto.

11.13
The following Exhibits, attached hereto, form part of the Contract Documents:
Exhibit A: Modifications to the A121CM
Exhibit B: Supplementary Conditions
Exhibit C: Personnel Billing Rates and Matrix

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Exhibit D: Definition of Weather Days.
Exhibit E: Project Scope and Budget Summary
Exhibit F: Preliminary Divisional Cost Breakdown
Exhibit G: Pre-Construction Phase Schedule
Exhibit H: Preliminary Construction Phase Schedule

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

OWNER	CONSTRUCTION MANAGER
(Signature)	(Signature)
DON SILVER, PRES	PETER WATTINGTON, VICE PRESIDENT
(Printed name and title)	(Printed name and title)
April 30, 2004	APRIL 28 2004
Date	Date
ATTEST	ATTEST

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit A
Additional Provisions/Modifications based on the AIA A121CMC (2003 Edition)

5.4 COMMENCEMENT AND COMPLETION

Add the following paragraphs:

5.4.1 The date of commencement is the date from which the Contract Time of subparagraph 5.4.2 is measured; it shall be the date of the giving of the Notice to Proceed (the "Commencement Date"). The Owner shall issue the Notice to Proceed within ten calendar days of the last to occur of all of the following (the "Conditions to Commencement"): (i) closing of financing acceptable to Owner, sufficient in an amount to satisfy the Owner's financial obligations hereunder, and (ii) receipt of all permits and approvals necessary to allow commencement and continuation of construction. In no event shall the Construction Manager commence any work on site by placing materials at the site or by conducting other Work at the site until a Notice to proceed has been given.

The immediately aforementioned notwithstanding, Construction Manager and Owner acknowledge that prior to receiving a Notice to Proceed the Construction Manager may be required to enter into certain other subcontracts, issue purchase orders, or make similar commitments which, if the Project were not to proceed would result in the incurrence, by Construction Manager of certain costs, financial penalties, or other like or similar expenses. Owner agrees to reimburse Construction Manager all such costs, penalties, or similar expenses, so long as, and only to the extent that Construction Manager has received Owner's written approval prior to the incurrence of such costs, and/or the entering into such subcontracts, authorization of such purchase orders or making such similar commitments. Any activity conducted hereunder shall in no way effect the dates established for substantial completion for each phase as shall be provided for in Amendment No. 1 hereto.

5.4.2 It is anticipated that the Work is to be completed in phases so as to permit residents of the Project to move in on a phased basis (each of which shall be referred to as a "Phase").

.1 Substantial Completion of each Phase is to occur on or before an agreed date. The agreed dates for each Phase shall established by Amendment No. 1 to this Agreement at the time the GMP is established, which shall be an agreed upon number of calendar days from the Commencement Date. Once established each of these days shall be measured from the Commencement Date and may only be extended in accordance with the Contract Documents.

.2 Each date by which Substantial Completion of a Phase must occur pursuant to the Contract Documents shall be referred to as a "Phase Completion Deadline". The period of time from the Commencement Date to the applicable Phase Completion Deadline shall be referred to as the "Phase Contract Time".

.3 The Owner and the Construction Manager acknowledge that if the Construction Manager fails to achieve substantial completion of a Phase before the applicable Phase Completion Deadline, the Owner will suffer damages which are difficult to ascertain. However, the Owner and the Construction Manager agree that the degree to which the Owner will be damaged by the Construction Manager's failure to substantially complete a particular Phase of the Project within the Phase Contract Time generally will decrease as the overall Project nears Substantial Completion. Accordingly, the Construction Manager agrees to pay the Owner as liquidated damages with respect to each particular Phase, and not as a penalty, for each calendar day that passes after the Phase Completion Deadline has expired for the particular Phase of the Project, until the date that the Construction Manager achieves Substantial Completion of that particular Phase, an amount equal to the portion of the GMP allocable to that particular Phase times the construction financing daily interest for Project (the "Stipulated Damage

Amount"). Any liquidated damages payable by the Construction Manager as to a particular Phase shall then be determined by multiplying the Stipulated Damage amount by each day of delay. The Stipulated Damage Amounts for each phase shall be established by an amendment hereto at the closing for financing on the Project.

.4 For purposes of determining that portion of the GMP allocable to a particular Phase, the following method of calculating same will be utilized:

(i) Reasonably determine that amount of the total GMP which generally applies to construction of the Project (as a whole) by adding the sum of the following amounts contained within the GMP: (Specific amounts to be determined when GMP is established by Amendment to the Contract.)

Site Development	$_____
General Conditions	$_____
Construction Manager's Fee	$_____
Other	$_____
Total	$_____

(ii) Subtract total in (i) above from the total GMP to determine the "remaining GMP".

(iii) Utilize the approved Schedule of Values and construction costing information to calculate the percentage of the cost of a particular Phase to the "remaining GMP" amount as determined in (ii) above.

(iv) Apply the percentage from (iii) above for the particular Phase(s) to the GMP.

.5 The Stipulated Damage amount for each Phase is intended to be cumulative of the other Phases. Accordingly, if the Phase Completion Deadline for more than one (1) Phase shall have elapsed without the applicable Phases having been substantially completed, then the Stipulated Damage Amount for each Phase not so substantially complete shall be due and owing by the Construction Manager to the Owner. The Owner may collect the Stipulated Damage Amounts by withholding them from payments due the Construction Manager or by separate demand. The Stipulated Damage Amounts provided herein shall be in lieu of all other claims, costs, losses, damages and/or expenses that the Owner might otherwise have against the Construction Manager by reason of its failure to achieve Substantial Completion before the relevant Phase completion Deadline, whether arising from contract or tort, or actual, direct, indirect or consequential damages, and the Owner hereby releases the Construction Manager therefrom.

.6

.1 The Construction Manager agrees that final completion of each Phase of the Work shall occur as soon as possible after Substantial Completion of the Phase, but no later than thirty (30) calendar days after the date on which Substantial Completion of that Phase has occurred, as evidenced by the Architect's Certificate of Substantial Completion. Final payment as to a Phase shall be due upon final completion of such Phase.

.2 Owner acknowledges that there may be certain items which may be on order that, through no fault of the Construction Manager, may not arrive and/or otherwise be available for incorporation into the Work within said thirty (30) day period. To the extent that Owner, in Owners sole discretion, accepts a Phase as having achieved final completion, even though such items remain outstanding, Owner may, (a) acknowledge such acceptance, and (b) withhold up to one and one half (1.5) times the total cost (as determined by the Construction Manager) for each Phase, or $5000 for each Phase (whichever is greater), of such Work which remains incomplete or unincorporated.

.3 Further, it is the intent that outstanding items described in 5.4.2.6.2 are to be secured and installed as quickly as possible – preferably within five (5) days after the Construction Manager receives those items. It is acknowledged that some items may be more significant than others in terms of the operation or marketability of the project. It is also acknowledged that unless determined otherwise, the costs incurred by the Construction Manager for procuring, expediting and installing the items covered by 5.4.2.6.2 are reimbursable costs as defined under Article 6 of the Contract. Accordingly, it may be less costly for the Owner, and less disruptive to the operation of the facility, to have several items accumulated and installed at one time rather than have each item installed as it is delivered. Therefore, for each item outstanding as of Substantial Completion, within five (5) days the Construction Manager shall provide the Owner, in writing, with a proposed plan indicating the expected delivery date and proposed installation date for each item. The Owner and Construction Manager will jointly review (and revise as needed) said plan and reach an agreement on the plan. The Construction Manager will report to the Owner on a weekly basis of the status of the items remaining to be installed, and immediately notify the Owner of any change in delivery date or installation date due to unforeseen procurement or delivery problems. If, after receiving an outstanding item the Construction Manager fails to commence the Work within five (5) days after agreed upon commencement date, or subsequently fails to complete the Work in accordance with the agreed upon schedule,the Owner may exercise its right to carry out the work as provided in section 2.4 of the A201 General Conditions

.4 The provision stated above for withholding 1.5 times the cost of items outstanding at the time of Substantial Completion does not apply to any Upgrade Options initiated by the Owner subsequent to the decision date established by the Construction Manager for each upgrade option proposed for a given residential unit.

.7 Except for the portions of the project which the Owner has requested completion and occupancy prior to the completion of the Commons Areas in the El Centro building, it is the intent that when developing the Phase Completion Deadlines described in 5.4.2.1 and 5.4.2.2 above, for the purposes of determining what, if any, stipulated damage amount may be owed by Construction Manager, no phase shall be deemed to have achieved Substantial Completion until such time as (1) the common areas (as defined in Amendment No. 1) portion of the Project shall have achieved Substantial Completion or (2) the Owner agrees to deem the phase Substantially Complete or (3) the Owner takes beneficial occupancy of all or part of the phase. Further and accordingly, when establishing the completion dates for each phase as provided for herein by amendment hereto, such amendment shall also provide that no phase shall be deemed complete for the purposes hereof unless (1) and/or until the commons area portion of the Project shall have attained substantial completion, (2) the Owner has agreed to deem the phase Substantially Complete, or (3) the Owner takes beneficial occupancy of all or part of the phase.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be satisfactory to the Owner and Owner's lender. The Owner and the Owner's accountants and the lender and lender's accountant or consultants shall be afforded reasonable access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement and the Project, (collectively "the records") and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. All Records shall be maintained in accordance with generally accepted accounting principles, consistently applied. There shall be an "open book" policy, in effect at all times with regard to all Records relative to the project

maintained by either the Construction Manager or the Owner, or anyone on their behalf, and each party shall have full and complete access to said Records maintained by the other at all reasonable times. The Construction Manager shall require all Subcontractors and Sub-Subcontractors retained on a cost-plus basis to retain Records and permit the same access by Owner as is required of the Construction Manager under this Article 6.4.

6.4.1.1 If the Owner, Owner's accountants, Lender or Lender's accountants elect to perform an audit of "the records" maintained by Construction Manager, said audit shall be performed within six (6) months of the Final Completion of the project. This stipulation does not affect the Construction Manager's obligation to maintain "the records" for the time period noted in 6.4.1.

6.4.2 If, at any time during construction, any inspection by the Owner or the Lender of the Construction Manager's Records or any other data relating to the contract documents reveals an overcharge or undercharge by the Construction Manager as confirmed by an independent auditor, the next Application for Payment shall be appropriately adjusted by the amount of such overcharge or ~~undercharge and related Fee.~~

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

Add the following:

7.1.11 To the extent of payments received by the Construction Manager from the Owner, the Construction Manager warrants the real property on which the Project is located will remain free of any legitimate and proper claims of lien arising from the Work performed by or through the Construction Manager. If any such liens are properly recorded, the Construction Manager shall have fifteen (15) business days from its receipt of written notice by the Owner or Owner's agent (including Title company) of such recording within which to discharge or secure by cash deposit or by construction lien transfer bond any such claims of lien. If the Construction Manager fails to discharge or otherwise secure such claim of lien within said time period, the Owner shall be entitled to satisfy the lien or take whatever action it deems appropriate to remove the lien from its property. All reasonable expenses and costs, including reasonable attorney's fees, incurred by the Owner after the abovementioned fifteen (15) day period to effect the discharge, securing and/or removal of any such claims of lien shall be promptly reimbursed to the Owner by the Construction Manager.

7.1.12 Concurrently with each Application for Payment, Construction Manager will deliver to Owner lien waivers (which may be conditioned upon payment) waiving all lien rights in respect of the Project, executed by Construction Manager, and executed by Subcontractors and suppliers covering amounts paid on their account or to be paid with funds received from such Application for Payment. All lien waivers shall be in form and substance satisfactory to Owner and the Owners Lender(s). Additionally, the Construction Manager shall provide further evidence regarding application of each progress payment to payment of all Subcontractors and suppliers providing services or material in respect of the Project, and shall comply with such other reasonable requirements as the Owners Lender(s) may impose with respect to obtaining advances of funds be applied to each Application for Payment."

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION

Add the following the following subparagraphs to 9.1.1:

.1 Claims between the parties to this Agreement shall be resolved as set forth below. At all times, the parties shall approach the dispute resolution process in good faith.

.2 In the event of a Claim between the parties, the parties shall promptly meet in good faith to resolve the Claim informally before invoking the dispute resolution procedures ~~outlined elsewhere in the Contract Documents, including the A201 General Conditions and~~ Supplementary Conditions, and below. If the parties are not able to quickly resolve the claim, either party may request participation by the Architect. Both parties shall promptly submit a written summary of its position to the Architect. Upon receipt of both summaries, the Architect shall immediately convene a formal meeting with the parties to further discuss the Claim. If the Claim is not resolved within three business days after the commencement of such meeting, either party may then commence the dispute resolution process defined in the Contract Documents.

.3 If the informal dispute resolution efforts outlined in 9.1.1.2 are not successful, then the dispute resolution procedures outlined in the balance of the Contract Documents. Any mediation conducted pursuant to this Paragraph 9.1 shall be heldin Santa Fe, unless the parties mutually agree otherwise.

.4 Intentionally omitted
.5 Intentionally omitted

.6 Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

.7 Intentionally omitted
.8 The arbitration shall be held in Santa Fe.

.9 Notwithstanding anything herein to the contrary, if (1) the Claims involve a proposed, net aggregate payment or reimbursement in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose, an "interested person or entity" means any person or entity if (a) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (b) the interested person or entity is so situated that the disposition of the claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as other wise permitted by the Contract Documents or by law.

ARTICLE 11
OTHER CONDITIONS AND SERVICES

11.1 The Construction Manager recognizes that any Lender involved in financing the Project will have requirements pertaining to this Agreement. The Construction Manager agrees to cooperate with and assist the Owner and the Architect in amending and supplementing the Contract Documents to conform to reasonable and customary requirements of any Lender (to the extent such requirements are acceptable to the Owner). However, the Construction Manager shall not be responsible for actually preparing amendments or supplements to the Contract Documents for any reason at any time. Such amendments or supplements may include, without limitation, provisions:

A. Naming any Lender as an additional insured on the Construction Manager's bonds and insurance policies and providing notice to any Lender of termination, cancellation or material modification of such policies.

B. Requiring approval of Applications for Payment by a consultant designated by a Lender prior to payment.

C. Agreeing not to amend Contract Documents without the reasonable and timely consent of the Lender.

D. Requiring approval of Change Orders by the Lender, provide that Lender approval will be provided on a timely basis and the Owner will use its best efforts to secure such timely approval.

E. Requiring notice of the Owner's default to the Lender, with a Lender having the right to cure, and requiring continued performance by the Construction Manager, provided that the Lender assumes all contract obligations of the Owner.

F. Subordinating any lien rights of the Construction Manager to rights of the Lender.

G. Requiring copies of all written notices to be sent to the Lender.

H. Granting the Lender the right to inspect the work and to examine records pertaining thereto.

I. Recognizing the pledge of the Owner's rights under Contract Documents to the Lender.

J. Requiring the Construction Manager to acknowledge, on the Lender's request, whether or not the Owner is in default of its obligations under the Contract.

K. Requiring the Construction Manager to assist the Owner in preparing and submitting reports and information concerning the Work as may be reasonably required by the Lender.

11.2 Nothing contained in Paragraph 11.2 or Paragraph 11.3 is intended to derogate from any other rights to terminate this Contract that may be granted the Construction Manager elsewhere in this Contract, including, but not limited to, the provisions of Article 2 and Article 14 of the General Conditions and Article 10 of this Agreement.

11.3 The Construction Manager may perform all or any part of the Work with its own forces, or through an Affiliate, provided that (1) the Construction Manager secures at least two competitive bids with respect to the work Construction Manager intends to perform (2) the Owner consents thereto in writing, which consent shall not be unreasonably withheld, after full disclosure by the Construction Manager to the Owner of the affiliation or relationship of the Affiliate to the Construction Manager and (3) any Work performed by an Affiliate shall be covered in a separate agreement between the Construction Manager

and the Affiliate, which shall satisfy all of the requirements for subcontracts as set forth in Paragraph 5.3 of the General Conditions and which shall be approved by the Owner in writing.

11.4 Any amounts payable hereunder which are not paid when due shall thereafter accrue interest at Wall Street Journal "prime" plus one percent (1%) per annum or at the highest rate allowed under the law of the state where the Project is located, whichever is less.

RainbowVision Santa Fe/Wels Contract Agreement
Exhibit B
Supplementary Conditions to the AIA A201 General Conditions (1997 Edition)

1. The following Supplementary Conditions shall apply to that certain Standard Form of Agreement Between Owner and Construction Manager (the "Agreement") dated

2. For purposes of these Supplementary Conditions, capitalized terms shall have the meaning given to them in the Contract Documents (as such term is defined in Article 1 of the Agreement), unless otherwise defined in these Supplementary Conditions.

3. ~~The following paragraphs supplement, modify, or amend that certain Contract Document entitled~~ "General Conditions of the Contract for Construction," AIA Document A201, Fifteenth Edition, 1997, Articles 1 through 14 inclusive (the "General Conditions"). Where only a portion of any provision of the General Conditions is supplemented, modified, or amended, the remaining portions of that provision shall remain unaltered and in effect. In the event of any inconsistency between the General Conditions and these Supplementary Conditions, the terms of these Supplementary Conditions shall apply. Hereinafter, all references to the General Conditions shall mean the General Conditions as amended by these Supplementary Conditions.

A. INTENTIONALLY OMITTED

B. PARAGRAPH 1.2.4 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.4 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with quality of the surrounding Work and of the construction of the Project generally.

C. PARAGRAPH 1.2.5 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.5 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

D. INTENTIONALLY OMITTED

E. SUBPARAGRAPH 1.5.1, add at the end of the first sentence: ", unless otherwise identified and incorporated by reference in Agreement."

F. SUBPARAGRAPH 2.2.5 Modify Subparagraph 2.2.5 as follows:

"In addition to the sets the Construction Manager used for bidding, the Owner will furnish a to be agreed upon number of sets of black and white prints of the Drawings and copies of the Project Manual free of charge for execution of the Work. Additional sets may be purchased from the Office of the Architect."

G. SUBPARAGRAPH 3.2.3, delete the second sentence, and add at the end: "If the Construction Manager performs Work knowing it involves such error, inconsistency, omission or difference without such notice to the Architect, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributed to correction."

H PARAGRAPH 3.3 "SUPERVISION AND CONSTRUCTION PROCEDURES" is hereby supplemented by the addition of the following sub-paragraphs:

3.3.4. The Construction Manager shall carefully check its own work and that of Subcontractors as the Work is being performed. The Construction Manager shall ensure that incorrect or faulty Work is corrected as soon as possible but in any event in a timely manner so as not to impact the project schedule.

3.3.5 During the finishing stages of the project, the Construction Manager shall make frequent inspections of the Work in the presence of the Architect or the Owners Representative and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work. The Construction Manager shall ensure that incorrect or faulty Work is corrected in accordance with 3.3.4.

I. PARAGRAPH 3.4 "LABOR AND MATERIALS" is hereby supplemented by addition of the following Subparagraphs 3.4.3 and 3.4.4:

3.4.4 Should the Owner make reasonable objection, based upon qualifications, fitness, behavior or temperament, to the presence of any personnel of Construction Manager or any subcontractor, such person shall not perform services on the Project site, or otherwise in connection with the Project, without written consent of the Owner.

3.4.5 The Construction Manager shall not change or replace the assigned Project Manager or Superintendent without prior written consent by the Owner.

J. SUBPARAGRAPH 3.5.1, Add to the end: "Construction Manager's warranties shall commence upon Substantial Completion of the Work for each Phase and continue for a period of one year thereafter."

K. PARAGRAPH 3.5 "WARRANTY" is hereby supplemented by the addition of the following sub-paragraphs:

3.5.2. In the event of a claim by the Owner against the Construction Manager under Paragraph 3.5.1. of these General Conditions (or under any other express written warranty-made by the Construction Manager) for any item of Work performed under the Contract Documents, the Owner shall give notice (a "Warranty Notice") of the claim to the Architect and the Construction Manager and thereafter, the Architect or Architects authorized representative and the Construction Manager shall inspect the item(s) of Work in question. If following its inspection the Architect determines that any such item is included within the Construction Manager's warranty under the Contract Documents, then:

(a) Upon formal notification from the Architect, the Construction Manager shall have thirty (30) days, notwithstanding any other time period specified in the Contract Documents, to either (1) complete the cure for the item or, for a Longer Cure item, commence the cure and thereafter diligently proceed to complete the cure, or (2) if the Construction Manager disputes the warranty coverage of the item, commence the

dispute resolution procedures described in Section 4.3 of the General Conditions.

(b) if upon the expiration of the thirty (30) day period the Construction Manager has failed to satisfy the provisions of either clause (a) (1) or clause (a) (2) immediately above, then the Owner shall have the right to engage a third party Construction Manager of the Owner's sole selection to cure or complete the cure of the warranty item at the Construction Manager's expense.

(c) If the Construction Manager fails to cure an item within the required time and if the item is finally determined by arbitration or, when permitted, judicial proceedings to be covered by any Construction Manager's warranty under the Contract Documents, then the Construction Manager shall be liable for all expenses incurred by the Owner in enforcing its warranty claim including legal and Architectural fees and expenses, an administrative charge of a percentage equal to Construction Manager's fee times the cost to cure the warranty item to cover the Owner's administrative costs to enforce the warranty claim, and, when a third party Construction Manager has been engaged by the Owner under this Paragraph 3.5.2, the costs and expenses of the third party Construction Manager.

L. INTENTIONALLY OMITTED

M. ARTICLE 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES is supplemented by the following replacement language for Subparagraph 3.12.4

3.12.4 Shop Drawings, Product Data, Samples and similar submittals which are required by the Contract Documents to be submitted for Architect's review shall become Contract Documents upon Architect's review and approval. Submittals which are not required by the Contract Documents to be submitted for Architect's review are not Contract Documents.

N. ARTICLE 3.16 "ACCESS TO WORK" is hereby supplemented by addition of the following Subparagraph:

"3.16.2 Representatives of the State Agencies shall have access at all reasonable times to the Work wherever it is in preparation or progress, and the Construction Manager shall provide proper facilities for such access and inspection."

O. PARAGRAPH 4.2.4 "COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION" is hereby supplemented by the additions of the following subparagraphs: Nothing contained herein shall prohibit the Owner's Representative from communicating directly with the Construction Manager for the purpose of receiving information and/or providing the Construction Manager with clarification as to Owner's position with regard to any matters affecting or concerning the Work.

4.2.4.1 The following definitions shall apply to construction communications:

4.2.4.1.1 Contract Document Clarifications: An answer from the Architect, in response to an inquiry from the Construction Manager, intended to make some

requirement(s) of the Drawings or plans clearly understood. Drawing/plan clarifications may be sketches, drawings, or in a narrative form and are not intended to change any requirements of the Contract Documents. Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.2 Non-Conformance Notice: A Notice issued by the Architect documenting that the Work or some portion thereof has not been performed in accordance with the requirements of the Contract Documents. Payment shall not be made on any portion of the Work for which a Non-Conformance Notice has been issued and the Work not corrected to the satisfaction of the Architect.

Upon receipt of a Non-Conformance Notice the Construction Manager shall provide a written Response to the Non-Conformance Notice within five (5) working days after receipt of the Notice. The Construction Manager's response shall state either (a) the basis of Construction Manager's determination that the Work was performed in accordance with the Contract Documents or (b) the corrective action Construction Manager intends to take, at its sole expense, to correct the non-conforming work

If the Construction Manager disputes issuance of the Notice the Architect has five (5) working days in which to respond by either (a) withdrawing the Notice of Non-Conformance or (b) directing the Construction Manager to correct the Work.

If directed to correct the Work, the Construction Manager shall do so within five (5) working days after receipt of such direction from the Architect, or such other time as may be agreed to with the Architect, without loss of rights for claim recovery or dispute resolution as may be available by the Contract.

4.2.4.1.3 Requests for Information: A written request from the Construction Manager or one of its subcontractors, to the Architect, seeking an interpretation or a clarification of some requirement of the Contract Documents. The Construction Manager shall clearly and concisely set forth the issue for which it seeks clarification or interpretation and why a response is needed from the Architect.

Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.4 Substitution/Or-Equal Submittals: A written request from the Construction Manager to substitute a material, article, device, product, fixture, form, type of construction, or process called for in the Contract Documents with another item that shall substantially equal in all respects to that so indicated or supplied. Each such request shall specifically set forth any manner in which the proposed change does not conform to the Contract Documents and Construction Manager (and any subcontractor initiating the request) warrants that the proposed substitute conforms in all respects with the contract documents except as specifically identified as non-conforming in the request.

4.2.4.1.5 Submittals/Shop Drawings: When required by any technical specification included in these Contract Documents, the Construction Manager shall transmit to the Architect technical submittals, shop drawings, or samples, including supporting catalog cuts, manufacturer's literature, sketches or drawings, calculations, and other pertinent, in sufficient detail to enable the Architect to review the information and determine that the Construction Manager clearly understands the requirements of the Contract Documents. Construction Manager (and any subcontractor initiating a submittal) warrants that all Work and materials depicted in technical submittals, shop drawings and samples shall conform in all respects to the requirements of the Contract Documents, except as otherwise specifically identified as non-conforming.

4.2.4.1.6 Schedule Submittals: When required by the Construction Schedule Specification of these Contract Documents, the Construction Manager shall submit required schedules, schedule updates, schedule revisions, time impact analysis, etc. for review.

P. INTENTIONALLY OMITTED

Q. SUBPARAGRAPH 4.3.7.2 is hereby revised (and paragraphs 4.3.73 and 4.3.7.4 are added) to read as follows:

4.3.7.2 Weather days: Construction Manager confirms that the Contract Time, Phased Contract Time and the agreed upon dates for same as set forth in Amendment No. 1 to this Agreement are reasonable periods to perform The Work. Construction Manager has included in the work schedule ordinary and normally anticipated lost days due to adverse weather ("weather days") and therefore Construction Manager shall not be entitled to an extension of the Contract Time or Phased Contract Time as a result of weather conditions normally experienced in the greater Santa Fe area unless (1) the Construction Manager is unable to make up for the weather delay by scheduling work for a Saturday in accordance with in 4.3.7.2 below, and (2) the number of weather days lost (and not made up by Saturday work) in that calendar month exceeds the number of weather days provided for in the Contract Time.

4.3.7.3 The Construction Manager's work schedule is based upon a regular five-day work week per calendar week. It is mutually agreed that in the event of a weather day the Construction Manager, before requesting a time extension the Construction Manager will first try to make up that weather day on the next Saturday available during the following 30 calendar days. A Saturday will be considered to be "available" only if all of the following conditions are met: (1) no work has already been scheduled for that day that would interfere with the work being rescheduled, (2) it is not a national holiday, (3) working on that Saturday is allowed by local ordinance, and (4) materials and workforce equivalent to what was scheduled for the lost weekday are available on that Saturday. The Construction Manager will only be required to utilize a Saturday if either (a) the Construction Manager incurs no additional cost in rescheduling work for that Saturday, or (b) the Owner agrees to compensate the Construction Manager (by Change Order) for any additional costs (such as for labor rate differential) the Construction Manager may incur.

4.3.7.4 The requirement stated above for the Construction Manager to utilize a Saturday to make up for a weather delay only applies the number of weather days included in each calendar month as indicated in the following list of Anticipated Lost Days. For every weather day beyond the number included below, the Construction Manager shall be entitled to an equivalent number of days extension to the Contract Time. The Construction Manager may (at the CM's sole discretion) attempt to mitigate the delay utilizing additional Saturdays as outlined in 4.3.7.3, but has not obligation to do so.

For the purposes of this Paragraph the table provided below setting forth the norms/anticipated lost weather days shall be utilized by the parties in determining lost weather days:

Month	Anticipated Lost Days Due to Adverse Weather
January	1
February	1
March	0
April	1
May	0
June	0
July	1
August	1
September	2
October	2
November	1
December	0

See the Exhibit D "Weather Delays" - attached to the Contract.

R. INTENTIONALLY OMITTED

S. SUBPARAGRAPH 4.6.8, add as new subparagraph :

"4.6.8 Limitations of Arbitration. Notwithstanding anything in the Contract Documents to the contrary, if (1) the Claims involve a proposed, net aggregate payment to owner or Construction Manager in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose an "interested person or entity" means any person or entity if (3) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (4) the interested person or entity is so situated that the disposition of the Claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as otherwise permitted by the Contract Documents or by law."

T. SUBPARAGRAPH 5.2.1, change "promptly" to "within 10 days" in lines 5 and 7.

U. PARAGRAPH 7.3 "CONSTRUCTION CHANGE DIRECTIVES"

Subparagraph 7.3.3.3 is hereby changed to read as follows:

7.3.3.3 The following fees apply to Changes to the Work;

7.3.3.3.1 INTENTIONALLY OMITTED

7.3.3.3.2 The same markup applied by the subcontractor in the subcontractors base subcontract, which shall be defined in said subcontract and subject to Owner's approval, to the cost of work performed by any subcontractor.

V. INTENTIONALLY OMITTED

W. INTENTIONALLY OMITTED

X. PARAGRAPH 9.8.1. of the General Conditions is hereby deleted in its entirety and the following is substituted in lieu thereof:

9.8.1 "Substantial Completion" of the Project shall be deemed to occur when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and, in addition, all requirements of the Contract Documents for Substantial Completion, including the following conditions, have been fulfilled as follows:

a. A Temporary of Final Certificate of Occupancy has been issued and all construction related approvals, licenses and requirements have been obtained or satisfied for the Project such that the Project may be operated for its intended use.

b. INTENTIONALLY OMITTED

Y. PARAGRAPH 9.8.2. of the General Conditions is hereby deleted in its entirety and the following Paragraphs 9.8.2.1. through 9.8.2.6. are substituted in lieu thereof:

9.8.2.1. When the Construction Manager considers that the Work, or portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Following receipt of the Construction Manager's list, the Architect will make an inspection (the "Initial Punch List Inspection") to determine whether the Work or designated portion thereof is Substantially Complete. Upon completion of its Initial Punch List Inspection, the Architect shall prepare and submit to the Construction Manager and the Owner the Architect's list (the "Punch List") of items to be completed or corrected. For the items on the Punch List, the Architect shall specify:

a. a date (a "Punch Item Date") by which such items shall be completed, which Punch Item Date shall be no more than forty-five (45) days from the date of the Punch List unless the Architect determines that reasonable cause exists for a later completion date; and

b. the cost to complete or correct the items as reasonably determined by the Architect.

The Architect shall expressly state on the Punch List what the Construction Manager must do to achieve Substantial Completion under Paragraph 9.8.1 of the General. If as a result of the Initial Punch List Inspection the Architect determines that Substantial Completion has occurred, the Architect shall prepare a Certificate of Substantial Completion pursuant to Paragraph 9.8.2.5 below.

9.8.2.2 If the Construction Manager has not given notice that the Work is substantially complete and requested inspection thereof on or before the date for Substantial Completion set by the parties in the Contract Documents, then the Owner may request the Architect to make an Initial Punch List Inspection of the Work to (x) prepare the Punch List pursuant to the provisions of Paragraph 9.8.2.1. above and (y) determine if Substantial Completion has occurred.

9.8.2.3. Upon the request of the Construction Manager prior to the expiration of the relevant Punch Item Date(s) and for good cause shown, the Architect may extend any Punch Item Date(s) for a reasonable period. Following receipt of the Punch List and the Construction Manager's compliance with the requirements of Paragraph 9.8.1. above, the Construction Manager may submit a request for another inspection by the Architect, if necessary, to determine whether Substantial Completion of the Work has been achieved.

9.8.2.4. If the Construction Manager fails to satisfactorily complete any item(s) on the Punch List by the applicable Punch Item Date(s), then the Owner has the right to take over the work in accordance with Section 2.4 of the General Conditions.

9.8.2.5.When the requirements of Paragraph 9.8.1. above have been met and upon the request of either the Owner or the Construction Manager, the Architect shall prepare a Certificate of Substantial Completion, in the form set out in Paragraph 9.8.3 below, which shall establish the date of Substantial Completion and shall establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise specifically stated in the Contract Documents or in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Construction Manager for their written acceptance of responsibilities assigned to them in such certificate.

Z. INTENTIONALLY OMITTED

AA. In addition to the provisions of Paragraph 9.10 Final Completion shall not have been deemed to have occurred until the date upon which all of the following have occurred:

a. INTENTIONALLY OMITTED

b. Delivery of conditional or unconditional lien waivers from each person who performed work at or provide or fabricated materials in connection with the Work (including all subcontracts executed in connection therewith), other than from those persons whose claims are being contested by Construction Manager in good faith and for which Construction Manager has provided to Owner a bond or security in an amount reasonably acceptable to Owner, and

c. Issuance and obtaining of a final, unconditional certificate of occupancy and all construction-related approvals, licenses, and requirements for the Project enabling it to be occupied and operated for its intended use.

BB. SUBPARAGRAPH 9.10.4.1, after "Claims" add: "previously made in writing and identified by Owner as unsettled at the time of final payment."

CC. Paragraph 10.1.1 add the following: "Construction Manager shall prepare and submit to Owner for Owner's approval a comprehensive safety program. Further, Construction Manager shall provide written verification and certification in a form satisfactory to the

Owner, that all subcontractors have familiarized themselves with the safety program and agreed to abide by said program and training regimen thereunder.

DD. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." In the first line of Subparagraph 11.1.1, following the work " companies," insert the following:

", acceptable to the Owner,."

EE. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." Add the following to subparagraph 11.1.3:

"Certificates called for herein shall be furnished in duplicate and shall specifically set forth evidence of all coverage required by 11.1.2 and the Construction Manager shall furnish to the Architect copies of all endorsements that are subsequently issued amending coverage or limits."

FF. SUBPARAGRAPH 13.4.3, add as a new subparagraph:

"In the event of any litigation between the parties, the prevailing party shall be entitled to reimbursements for all reasonable attorneys' fees, expert fees, court costs, and all other third-party costs of the litigation incurred by the prevailing party to the extent allowed by law."

GG. PARAGRAPH 13.5 "TESTS AND INSPECTIONS" is hereby supplemented by the addition of the following subparagraph:

"13.5.7 When work has been installed contrary to any Contract requirements and the Construction Manager requests the privilege of testing in lieu of removal, such testing shall be at the Construction Manager's expense."

HH. INTENTIONALLY OMITTED

II. Add the following new Article:

ARTICLE 15: REQUESTS FOR INFORMATION

15.1.1 In the event that the Construction Manager or its subcontractor, at any tier, determines that some portion of the Drawings, Specifications, or other Contract Documents requires clarification or interpretation by the Architect, the Construction Manager shall submit a Request for Information in writing to the Architect. Requests for Information may only be submitted by the Construction Manager and shall be only submitted on the Request for Information Forms provided by the Architect. The Construction Manager shall clearly and concisely set forth the issue for which clarification and interpretation is sought and why a response is needed from the Architect. If the Request for Information is being used to request confirmation of an interpretation or understanding of a requirement, the Construction Manager shall set forth that interpretation or understanding of the requirement along with reasons why such an understanding was reached.

15.1.2 The Architect will review all Requests for Information to determine whether they are Requests for Information within the meaning of this term. If the Architect determines

that the document is not a Request for Information, it will be returned to the Construction Manager, unreviewed as to content, for resubmittal on the proper form and in the proper manner. In either case, the Architect must reply to RFI in writing within the time requested by the Construction Manager, or three (3) working days, whichever is earlier.

15.1.3 Responses from the Architect are not intended to change any requirement of the Contract Documents. In the event the Construction Manager believes that a response to a Request for Information will cause a change to the requirements of the Contract Document, the Construction Manager shall immediately give written notice to the Architect in accordance with Section 4 of the General Conditions stating that the Construction Manager considers the response to be a change in the scope of work or a change to the project schedule..

END OF SUPPLEMENTARY CONDITIONS

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit "C"

Weather Delays

1. A "Work Day" is defined at Monday thru Friday, 7:30 am– 4:400 pm.

2. The occurrence of one or more of the following will constitute a weather delay as indicated:

   a. 0.25" of rain during the workday constitutes one lost workday
   b. 2.0" of snow during the workday constitutes one lost workday
   c. 12" of snow in a 24-hour period constitutes two lost workdays.
   d. Temperature of 5 degrees below zero (Fahrenheit) constitutes one lost workday.
   e. Any drying time required for soil stabilization (as directed by the geotechnical engineer) due to rain or snow will constitute lost work day(s).

3. Weather days will be included in the final schedule approved as part of the GMP proposal to be incorporated into the contract by amendment. The number of weather days included will be in accordance with Section 3.P of Exhibit B. Adjustments to the contract completion dates due to adverse weather will be made in accordance with Section 3.P of Exhibit B.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit "D"
Personnel Billing Rates

Position	Reimbursable as a Cost of the Work (w/in GMP)	Included In Fee	Notes	Expected to be Full or Part Time	Billing Rate ($/hr)
Field Staff Stationed on Site					
Superintendent	X		1	Full	$70
Project Engineer, QA/QC	X		1	Full	$60
Carpenter	X		2	Full	Varies - local rate
Laborer	X		2	Full	Varies - local rate
Personnel Not Stationed on Site					
Vice President		X			
CFO		X			
Project Manager	X		3	Part	$75
General Superintendent	X		3	Part	$75
Project Coordinator		X			
Safety Director	X		3	Part	$50
Project Accountant		X			
Pre-Construction Personnel					
Senior Estimator/Pre-Con Services M	X		4	Part	$90
Assistant Estimator	X		4	Part	$60

Notes:

1 Field staff on project site.
2 It is expected that all trade work will be subcontracted. Trade labor rates shown only if need for Gen Conditions.
3 Billed only for time spent on site and traveling to project
4 Billed only for time during pre-construction phase, subject to Pre-construction services billing cap (see Exhibit F).

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit E
Project Scope & Budget Summary

- The Scope of the project includes:
  - 40 Single-story Condominium living units
  - 80 Single-level Independent Living units built in a series of two-story buildings
  - 26 Assisted Living apartments (and related support spaces) constructed on the 2nd level of the central services building
  - Central services building (El Centro) containing commercial kitchen, dinning spaces, activity spaces, administrative and marketing offices, retail spaces, and a spa/wellness center.
  - ~~13 acres of site development, with some off-site, public improvements~~
  - Total building area is approximately 183,000 sf.

- Based on a preliminary site plan and building design commissioned by the Owner, the Construction Manager prepared a detailed, preliminary cost report and presented that report to the Owner on February 1, 2004. Based on that scope and cost report, the Owner has established a construction budget of $20,540,000, based on the Preliminary Divisional Cost Breakdown shown in Exhibit F.
- The Owner has contracted with the Architect to complete the design of the project in accordance with the budget stated above. The completion of the design, and related activities is proceeding in accordance with the Preconstruction Phase Schedule prepared and updated regularly by the Construction Manager. See Exhibit G.

- The Construction Manager has also prepared a Preliminary Construction Schedule. See Exhibit H. A final Construction Schedule will be included in the GMP report and made part of the contract by amendment.

- The Owner, Architect and Construction Manager are working together to monitor the completion of the design to ensure meeting the Construction Budget.

- Upon receipt of the Design Development documents, the Construction Manager will, in accordance with contract Section 2.2 prepare a GMP report that will include all of the elements outlined in Section 2.2.4. Prior to submitting the final GMP report, the Construction Manager will review the preliminary cost estimates with the Owner and Architect to determine if any adjustments to scope are required in order to achieve the construction budget stated above. Upon approval by the Owner, the GMP will be incorporated into the contract by amendment, in accordance with Section 2.2.

- During the completion of the design The Construction Manager will continue to meet regularly with the Owner and Architect, and will regularly review the Architect's work in progress to monitor the design as a means to ensure conformance to the construction budget.

RainbowVision Santa Fe/Weis Contract Agreement
EXHIBIT F

Preliminary Divisional Cost Breakdown

C.S.I. SYSTEMS BREAKDOWN		Total Costs	%
Division 1 - General Conditions		$1,047,401	5.9%
Division 1 - Building Permit Allowance		$184,620	1.0%
Division 2 - Site Construction		$1,534,319	8.7%
Division 3 - Concrete		$965,149	5.5%
Division 4 - Masonry		$488,608	2.8%
Division 5 - Metals		$439,822	2.5%
Division 6 - Woods & Plastics		$2,609,476	14.8%
Division 7 - Thermal & Moisture Protection		$969,353	5.5%
Division 8 - Doors & Windows		$771,105	4.4%
Division 9 - Finishes		$3,286,198	18.6%
Division 10 - Specialties		$592,969	3.4%
Division 11 - Equipment (See Note 1)		$445,320	2.5%
Division 12 - Furnishings (See Note 2)		$49,196	0.3%
Division 14 - Conveying		$230,919	1.3%
Division 15 - Mechanical		$2,410,820	13.7%
Division 16 - Electrical		$1,636,100	9.3%
Sub-Total		$17,661,276	100%
Escalation - For 2004	0.0%	-	
Sub-Total		$17,661,276	
Est./Const Contingency - El Centro	5.0%	$243,521	
Est./Const Contingency - Balance	3.0%	$383,726	
Sub-Total		$18,288,523	
Builders Risk Insurance	0.8%	$146,308	
Liability Insurance	0.85%	$156,696	
		$18,591,527	
Construction Manager Fee	3.00%	$557,746	
Sub-Total		$19,149,273	
Performance and Payment Bond		$106,393	
NM Gross Receipts Tax		$1,284,062	
Project Totals		**$20,539,728**	

Notes:

1. "Equipment" includes residential appliances, commerical kitchen and laundry equipment.
2. "Furnishings" does not include FF&E - which is being designed and purchased by the Owner under a separate contract.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit G
Preconstruction Phase Schedule

Refer to the "Preconstruction Schedule" dated _____ (filename: RVSF007), attached separately but made a part of this Exhibit by reference.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit H
Preliminary Construction Phase Schedule

Refer to the "Preliminary Construction Schedule" dated _____ (filename: _____), attached separately but made a part of this Exhibit by reference.

Amendment No. 1
(Revised December 15, 2004)
To Contract Agreement Between
RainbowVision Santa Fe, LLC and Weis Builders, Inc

In accordance with article 2.2.9 of the Contract Agreement, the Guaranteed Maximum Price (GMP) and Project Schedule are hereby modified to reflect the following:

- The Guaranteed Maximum Price will be Twenty-One Million Five Hundred Thirty Nine Thousand, Seven Hundred Twenty-Eight Dollars ($21,539,728).

- The Construction Start date will be January 3, 2005. Based on that start date:
- The Substantial Completion date for Buildings 16, 17, 18, 19, and 20 will be October 28, 2005.
- The Substantial Completion date for the balance of the project will be April 26, 2006.

Accordingly, the GMP Divisional Cost Breakdown (Exhibit F) shall be modified as per the attached revision, dated September 30, 2004. The revised GMP is based on the following:

- Weis September 15, 2004 "Confirmation of GMP" letter (with attachments)
- Weis September 30, 2004 "Summary of Approved Enhancements"

The Construction Schedule (Exhibit H) shall be as shown in the attached update, dated December 15, 2004.

For:
RainbowVision Santa Fe, LLC

(Signature)

JOY SILVER PRESIDEN
(Printed Name and Title)
RAINBOWVISION PROPERTIES, INC
MANAGING MEMBER

(Date)

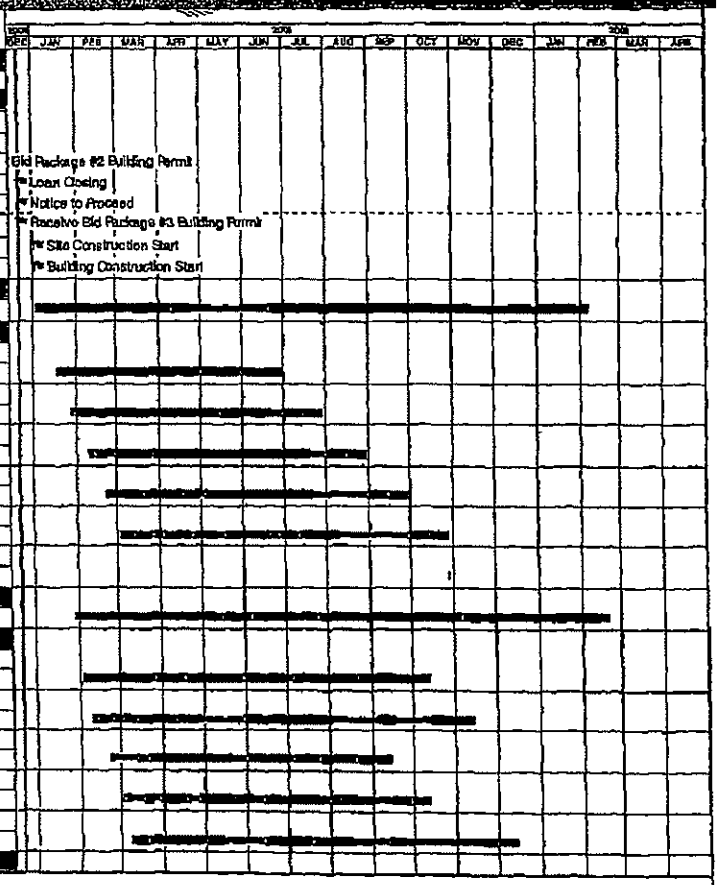
For:
Weis Builders Inc.

(Signature)

PETER WORTHINGTON, VICE PRESIDENT
(Printed Name and Title)

DEC-15, 2004
(Date)

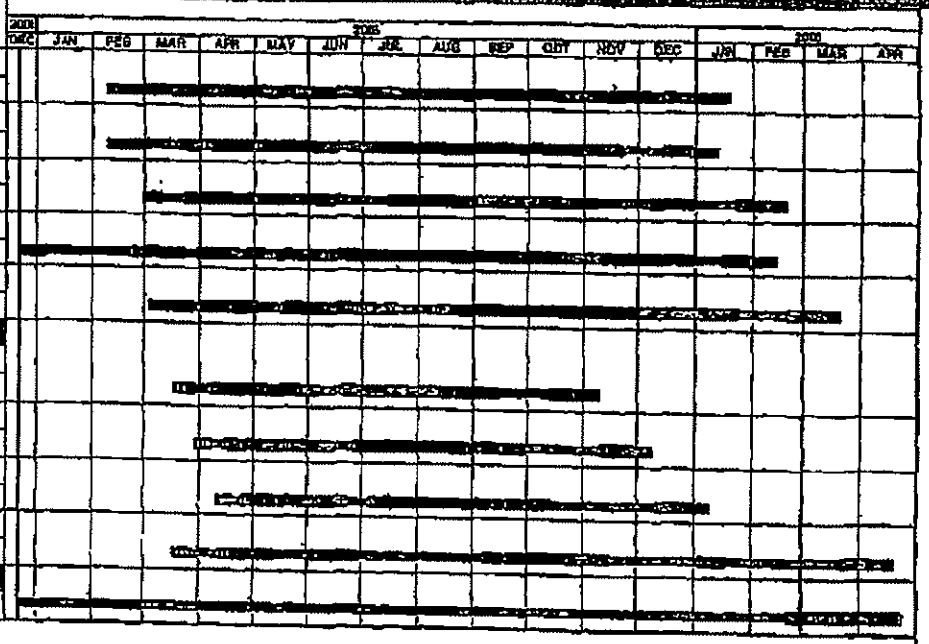
Act ID	Description	Dur	Early Start	Early Finish
Procurement				
1060	Receive Utilities Permit	0	05AUG04 A	
1120	Receive Grading Permit	0	05AUG04 A	
1080	Receive Bid Package #2 Building Permit	0	02NOV04 A	
1000	Loan Closing	0	22DEC04	
1005	Notice to Proceed	0	22DEC04	
1100	Receive Bid Package #3 Building Permit	0	22DEC04	
1010	Site Construction Start	0	03JAN05	
1020	Building Construction Start	0	03JAN05	
Sitework				
		285	03JAN05	08FEB06
Condominium Buildings Group 1 - North East				
+Condominium Building 20				
		117	18JAN05	28JUN05
+Condominium Building 18				
		130	28JAN05	29JUL05
+Condominium Building 19				
		144	09FEB05	30AUG05
+Condominium Building 17				
		158	21FEB05	28SEP05
+Condominium Building 16				
		171	03MAR05	28OCT05
+Closeout/Turnover Group 1 Condominiums				
		0	28OCT05	28OCT05
Building Group 2 - South East				
		275	28JAN05	20FEB06
+Independent Living Building 1 - 8 Units				
		180	03FEB05	13OCT05
+Independent Living Building 2 - 4 Units				
		198	09FEB05	14NOV05
+Condominium Building 3				
		147	21FEB05	14SEP05
+Condominium Building 4				
		159	03MAR05	12OCT05
+Independent Living Building 5 - 4 Units				
		201	08MAR05	14DEC05
Building Group 3 - South West				



Early bar
Progress bar
Start milestone point
Finish milestone point

Rainbow Vision Retirement Community
Santa Fe, New Mexico
Weis Builders, Inc.

Act ID	Description	Dur	Early Start	Early Finish
	+Independent Living Building 6 - 14 Units			
		247	09FEB05	20JAN06
	+Independent Living Building 7 - 10 Units			
		242	09FEB05	13JAN06
	+Independent Living Building 8 - 8 Units			
		256	28FEB05	20FEB06
	+Independent Living Building 9 - 14 Units			
		299	22DEC04	14FEB06
	+Independent Living Building 10 - 10 Units			
		272	04MAR05	21MAR06
	Buildings Group 4 - North West			
	+Condominium Building 15			
		169	18MAR05	10NOV05
	+Condominium Building 14			
		182	30MAR05	09DEC05
	+Condominium Building 12			
		195	11APR05	09JAN06
	+Independent Living Building 11 - 4 Units			
		283	18MAR05	19APR06
	+Museum			
		348	22DEC04	24APR06



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Rainbow Vision Retirement Community
Sante Fe, New Mexico
Weis Builders, Inc.

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CLAIM OF LIEN

To RainbowVision Santa Fe, LLC owner or reputed owner of the premises hereinafter described, and to all who may be concerned:

The Claimant, Weis Builders Inc. claims a lien in the sum One Million, Five Hundred Twenty-Two Thousand, Three Hundred Nineteen dollars ($1,522,319) plus legal fees, costs and interest, upon the following described property, to-wit:

RainbowVision Santa Fe (excluding Buildings #1, 2, 3, 4, 5, 11, 12, 14, 15, 16, 17, 18, 19, 20) located at 500 Rodeo Road, Santa Fe, New Mexico, more particularly described as:

Township 16 N, Range 9 E, Section 11, L.C.E. for RainbowVision condominiums, per Plat 605/24, and bearing uniform property code number 1-053-095-353-509 (excluding Buildings # 1, 2, 3, 4, 5, 11, 12, 14, 15, 16, 17, 18, 19, 20),

together with all improvements thereon, for labor/services performed and materials furnished by the claimant in the construction, alteration and repair, of a certain multi-building resort retirement community consisting of nineteen (19) one and two story residential buildings and a combination commercial/residential building (El Centro) situated on the property described above.

After deducting all just credits and offsets claimant's demands are: Unpaid amounts invoiced, including retainage ($1,168,362), unpaid contract balance ($15,685), and unpaid change order requests ($338,272).

The name of the owner or reputed owner of said property is RainbowVision Santa Fe, LLC and the name of the person with whom claimant contracted, for whom claimant performed services or to whom claimant furnished the said materials is RainbowVision Santa Fe, LLC.

The terms, time given and condition of claimant's contract are as shown in the contract documents attached hereto and marked Exhibit "I" and made a part of this claim.

Wherefore, claimant claims a lien upon said property and improvements thereon in the amount stated.

Weis Builders Inc.

By Peter Worthington

Peter Worthington, Vice President

EXHIBIT

2

STATE OF MINNESOTA }
} ss
COUNTY OF HENNEPIN }

Verification

Peter Worthington, of lawful age and upon being duly sworn upon his/her oath, states and verifies as follows: that he/she has read the foregoing Claim of Lien and understands the contents thereof; that the matters and things contained therein are true and correct to the best of his/her knowledge, information and belief.

Peter Worthington

SUBSCRIBED AND SWORN TO before me this 30th day of Jan, 2007

Mary F. Klein

My Commission Expires:
1/31/08

Notary Public

MARY F KLEIN
Notary Public
Minnesota
My Commission Expires January 31, 2008

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CLAIM OF LIEN
PAGES: 45

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

Hereby Certify That This Instrument Was Filed for Record On The 2ND Day Of February, A D., 2007 at 11.45 And Was Duly Recorded as Instrument # 1469461 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy _____ County Clerk, Santa Fe, NM

COUNTY CLERK
VALERIE ESPINOZA
SANTA FE
NEW MEXICO

AIA® Document A121™CMc – 2003 and AGC Document 565

Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor

AGREEMENT
made as of the Twenty Eighth day of April in the year of Two Thousand and Four
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

RainbowVision Santa Fe LLC
4001 Office Court Road,
Suite 403
Santa Fe, NM 87505

and the Construction Manager:
(Name and address)

Weis Builders, Inc.
7645 Lyndale Avenue South
Minneapolis, MN 55423

The Project is:
(Name, address and brief description)

RainbowVision Santa Fe Retirement Community
500 Rodeo Road at Antigua
Santa Fe, NM 87505

The Architect is:
(Name and address)

Lloyd & Associates Architects
301 N. GuadalupeSuite 104
Santa Fe, NM 87501

The Owner and Construction Manager agree as set forth below:

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

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

The 1997 Edition of AIA® Document A201™, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™–1997, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™–1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™–1997 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

§ 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

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§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of

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the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

.2 A list of allowances and a statement of their basis.

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

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(1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
(2) the Owner's first authorization to the Construction Manager to:
(a) award a subcontract, or
(b) undertake construction Work with the Construction Manager's own forces, or
(c) issue a purchase order for materials or equipment required for the Work.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™–1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

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ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™–1997, the Architect does not have such authority.

§ 3.3 ARCHITECT

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The Owner shall authorize and cause the Architect to provide Additional Services , requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be

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provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS
The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION
§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

The Construction Manager's fee for Preconstruction Phase Services shall be Seven Thousand Dollars ($7,000), in accordance with Weis's 1/22/03 letter of intent.

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond April 1, 2004 in accordance with Weis's 12/22/03 letter of intent.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 4.2 PAYMENTS
§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable Thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

Interest rate shall be 4% above US Bancorp Prime Rate.
(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

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§ 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

Base Fee will be Three percent (3.0%) of the Cost of the Work as defined in Article 6. For changes in the Work not associated with any " Resident Upgrade Packages" that are to be offered on a unit-by-unit basis, the fee for additive changes will be 3.0% and for deductive changes the fee will be 0.0%.

5.1.2

In addition to the basic fees in 4.1.1 and 5.1.1 above, the Owner shall pay the Construction Manager a Resident Upgrade Fee equal to 15% of the cost of the work, tother with such reasonable administrative costs that the Construction Manager will incur directly related to the performance of such work, associated with the Resident Upgrade Packages that the Owner is planning to offer. It is the intent that a limited number of such Upgrade packages will be offered by the Owner, and that once the scope and cost for the upgrades being considered is established, the Owner and Construction Manager will incorporate by Amendment to this Contract the terms and conditions pursuant to which the Construction Manager shall perform such work. It is intended that the Construction Manager will establish a lump sum price per unit type for each Upgrade Package to be offered, and that said lump sum price shall include the fee and administrative costs described above, as well as define the date for each unit by which the Owner must direct the Construction Manager to proceed with the Upgrade. Unit upgrades for which direction to proceed is given after the agreed upon date, or which reflect a deviation in scope from the defined Upgrade Packages will be evaluated separately, and a cost and time adjustment proposed, by the Construction Manager.

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. At time of Final Completion, any costs savings shall be returned 100% to the Owner and 0% to the Construction Manager.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.3 CHANGES IN THE WORK

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™–1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™–1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™–1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

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§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

"Article 5.4: Commencement and Completion has been added. See Exhibit A."

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement. To the extent that some of the Construction Manager's supervisory and administrative personnel located at the Construction Manager's main office provide service to the project, a portion of their wages and salaries will be included in the cost of work and will be reimbursed in accordance with Exhibit C.

Classification	Name

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed,

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whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds. *(If charges for self-insurance are to be included, specify the basis of reimbursement.)*

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™–1997 or other provisions of the Contract Documents.

.6 Data processing costs related to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

.10 All premiums (without markup) and deductibles associated with Builder's Risk insurance provided by the Construction Manager at the Owner's request.

.11 All premiums (without markup) and deductibles associated with providing professional liability insurance for the mechanical and electrical design services for the condominiums and IL units.

§ 6.1.7 OTHER COSTS

.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager except, however, where conditions requiring such action were caused by or are the result of the Construction Manager's negligence.:

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.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™–1997.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA or A201™–1997 other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

.6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

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

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 See Exhibit A for revised Accounting Records requirements.

ARTICLE 7 CONSTRUCTION PHASE

§ 7.1 PROGRESS PAYMENTS

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

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

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§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™–1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee, less retainage of Five percent (5.00%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five percent (5.00%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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7.1.8.1 As an alternative means of achieving the 5% retainage described in 7.1.7 and 7.1.8 above, the Construction Manager and the Subcontractors may allocate a portion of their respective contract amounts to a "Final Completion" line item within each firm's schedule of values. The portions of each contract so allocated shall be equal to the 5% retainage stipulated. Billing against any such "final completion" line item in a schedule of values will be allowed only under the same circumstances as otherwise defined in the contract documents for the reduction or release of retainage.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™–1997 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™–1997 . The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™–1997.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's

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accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

(Paragraph deleted)

None

8.1.2 Insurance provided will be per the construction Manager's standard policy. The Construction Manager will provide the Owner with a statement of the additional premium cost (if any) associated with other insurance coverage as the Owner may want to consider. If the Owner elects to require the Construction Manager to provide other coverage or limits, then the contract will be adjusted accordingly.

§ 8.1.3

(Paragraph deleted)

§ 8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:

$10,000 Deductible Per Occurrence

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(Paragraph deleted)

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager shall (Insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to One hundred percent (100.00%) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner after the contract is executed and three days before the commencement of any Work at the Project site. Further, Construction Manager shall deliver a binding commitment for the issuance of such bonds at least two weeks prior to the estimated date for the closing on Project financing. In the event of any early start as identified in paragraph 4.2.1.1 Owner may require Construction Manager to provide such bonds. Owner shall provide Construction Manager with 10 days notice of such requirement and stipulate in such notice the time for providing same, and the amount of coverage required by owner.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™–1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™–1997, *General Conditions of the Contract for Construction*.

§ 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 9.2.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™–1997, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™–1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for

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Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager.

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™–1997.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™–1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™–1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

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11.1 thru 11.4
See Exhibit A

11.5
It is understood and agreed that the GMP is for the total cost of the work and that cost over-runs from one line item can be offset by cost savings from another line item.

11.6
All personnel listed in Exhibit C as a "Reimbursable as a cost of the work" shall be included in the cost of the work per Article 7.2, subject to the GMP per Article 6.1.2.2.

11.7
The following procedure is agreed to by Owner and or Owner's lender and Title Company in the event of a lien being filed by one of the Contruction Manager's Vendors and/or Vendor's Vendor(s): At the Construction Manager's sole discretion either 1. Construction Managershall make a cash deposit equal to 150% of each lien amount in separate escrow account held by Owner's Title Company on behalf of the; Construction Manager or 2. The Construction Manager may provide a lien transfer bond for the amount of the lien. Upon said deposit being made or lien bond being provided by Construction Manger, Owner and or Owner's Lender, and Title Company shall immediately disburse to Construction Manager any monies owed to Construction Manager under the terms of this contract.

11.8
Owner and Construction Manager agree to the following punch list procedure for each phase of the project:
1. Prior to issuance of temporary of Full Certificate of Occupancy by City, Owner and/or Owner's designated representative(s) shall prepare one original interior and exterior punch list.
2. Within 7 calendar days after completion punch list work by Construction Manager, Owner and/or Owner's representative(s) will re-inspect to confirm original punch list items are complete.
3. New items will not be added to the original punch list at any time except for items which are substantial (i.e. no hot water) and thus were obviously missed during original punch list items.
4. Any item(s) not included in original punch list shall be considered warranty item(s).
5. Warranty items shall not be considered outstanding punch list items and thus shall not be subject to withholding of final payments.

11.9
If a discrepancy occurs within this Agreement and/or between this Agreement and other contract documents, it is understood and agreed that Article 11 of this Agreement, the balance of this Agreement, and Exhibits "A", "B", "C" and "D"(in that order) shall govern.

11.10
If interest costs occur per Paragraph 4.2, the cost shall be reimbursed by issuance of an Owner Change Order.

11.11
Architect shall return all submittals (i.e. shop drawings) to Contractor within 10 working days of date received from Contractor.

11.12
Modification and/or extension of project completion date due to "weather days" shall be as outlined in Exhibit "D" attached hereto.

11.13
The following Exhibits, attached hereto, form part of the Contract Documents:
Exhibit A: Modifications to the A121CM
Exhibit B: Supplementary Conditions
Exhibit C: Personnel Billing Rates and Matrix

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Exhibit D: Definition of Weather Days.
Exhibit E: Project Scope and Budget Summary
Exhibit F: Preliminary Divisional Cost Breakdown
Exhibit G: Pre-Construction Phase Schedule
Exhibit H: Preliminary Construction Phase Schedule

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

OWNER	CONSTRUCTION MANAGER
(Signature)	(Signature)
JOE SILVER PRESIDENT	PETER WASHINGTON, VICE PRESIDENT
(Printed name and title)	(Printed name and title)
MAY 1, 2004	APRIL 29 2004
Date	Date
ATTEST	ATTEST

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit A
Additional Provisions/Modifications based on the AIA A121CMC (2003 Edition)

5.4 COMMENCEMENT AND COMPLETION

Add the following paragraphs:

5.4.1 The date of commencement is the date from which the Contract Time of subparagraph 5.4.2 is measured; it shall be the date of the giving of the Notice to Proceed (the "Commencement Date"). The Owner shall issue the Notice to Proceed within ten calendar days of the last to occur of all of the following (the "Conditions to Commencement"): (i) closing of financing acceptable to Owner, sufficient in an amount to satisfy the Owner's financial obligations hereunder, and (ii) receipt of all permits and approvals necessary to allow commencement and continuation of construction. In no event shall the Construction Manager commence any work on site by placing materials at the site or by conducting other Work at the site until a Notice to proceed has been given.

The immediately aforementioned notwithstanding, Construction Manager and Owner acknowledge that prior to receiving a Notice to Proceed the Construction Manager may be required to enter into certain other subcontracts, issue purchase orders, or make similar commitments which, if the Project were not to proceed would result in the incurrence, by Construction Manager of certain costs, financial penalties, or other like or similar expenses. Owner agrees to reimburse Construction Manager all such costs, penalties, or similar expenses, so long as, and only to the extent that Construction Manager has received Owner's written approval prior to the incurrence of such costs, and/or the entering into such subcontracts, authorization of such purchase orders or making such similar commitments. Any activity conducted hereunder shall in no way effect the dates established for substantial completion for each phase as shall be provided for in Amendment No. 1 hereto.

5.4.2 It is anticipated that the Work is to be completed in phases so as to permit residents of the Project to move in on a phased basis (each of which shall be referred to as a "Phase").

.1 Substantial Completion of each Phase is to occur on or before an agreed date. The agreed dates for each Phase shall established by Amendment No. 1 to this Agreement at the time the GMP is established, which shall be an agreed upon number of calendar days from the Commencement Date. Once established each of these days shall be measured from the Commencement Date and may only be extended in accordance with the Contract Documents.

.2 Each date by which Substantial Completion of a Phase must occur pursuant to the Contract Documents shall be referred to as a "Phase Completion Deadline". The period of time from the Commencement Date to the applicable Phase Completion Deadline shall be referred to as the "Phase Contract Time".

.3 The Owner and the Construction Manager acknowledge that if the Construction Manager fails to achieve substantial completion of a Phase before the applicable Phase Completion Deadline, the Owner will suffer damages which are difficult to ascertain. However, the Owner and the Construction Manager agree that the degree to which the Owner will be damaged by the Construction Manager's failure to substantially complete a particular Phase of the Project within the Phase Contract Time generally will decrease as the overall Project nears Substantial Completion. Accordingly, the Construction Manager agrees to pay the Owner as liquidated damages with respect to each particular Phase, and not as a penalty, for each calendar day that passes after the Phase Completion Deadline has expired for the particular Phase of the Project, until the date that the Construction Manager achieves Substantial Completion of that particular Phase, an amount equal to the portion of the GMP allocable to that particular Phase times the construction financing daily interest for Project (the "Stipulated Damage

Amount"). Any liquidated damages payable by the Construction Manager as to a particular Phase shall then be determined by multiplying the Stipulated Damage amount by each day of delay. The Stipulated Damage Amounts for each phase shall be established by an amendment hereto at the closing for financing on the Project.

.4 For purposes of determining that portion of the GMP allocable to a particular Phase, the following method of calculating same will be utilized:

(i) Reasonably determine that amount of the total GMP which generally applies to construction of the Project (as a whole) by adding the sum of the following amounts contained within the GMP: (Specific amounts to be determined when GMP is established by Amendment to the Contract.)

Site Development	$
General Conditions	$
Construction Manager's Fee	$
Other	$
Total	$

(ii) Subtract total in (i) above from the total GMP to determine the "remaining GMP".

(iii) Utilize the approved Schedule of Values and construction costing information to calculate the percentage of the cost of a particular Phase to the "remaining GMP" amount as determined in (ii) above.

(iv) Apply the percentage from (iii) above for the particular Phase(s) to the GMP.

.5 The Stipulated Damage amount for each Phase is intended to be cumulative of the other Phases. Accordingly, if the Phase Completion Deadline for more than one (1) Phase shall have elapsed without the applicable Phases having been substantially completed, then the Stipulated Damage Amount for each Phase not so substantially complete shall be due and owing by the Construction Manager to the Owner. The Owner may collect the Stipulated Damage Amounts by withholding them from payments due the Construction Manager or by separate demand. The Stipulated Damage Amounts provided herein shall be in lieu of all other claims, costs, losses, damages and/or expenses that the Owner might otherwise have against the Construction Manager by reason of its failure to achieve Substantial Completion before the relevant Phase completion Deadline, whether arising from contract or tort, or actual, direct, indirect or consequential damages, and the Owner hereby releases the Construction Manager therefrom.

.6

.1 The Construction Manager agrees that final completion of each Phase of the Work shall occur as soon as possible after Substantial Completion of the Phase, but no later than thirty (30) calendar days after the date on which Substantial Completion of that Phase has occurred, as evidenced by the Architect's Certificate of Substantial Completion. Final payment as to a Phase shall be due upon final completion of such Phase.

.2 Owner acknowledges that there may be certain items which may be on order that, through no fault of the Construction Manager, may not arrive and/or otherwise be available for incorporation into the Work within said thirty (30) day period. To the extent that Owner, in Owners sole discretion, accepts a Phase as having achieved final completion, even though such items remain outstanding, Owner may, (a) acknowledge such acceptance, and (b) withhold up to one and one half (1.5) times the total cost (as determined by the Construction Manager) for each Phase, or $5000 for each Phase (whichever is greater), of such Work which remains incomplete or unincorporated.

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.3 Further, it is the intent that outstanding items described in 5.4.2.6.2 are to be secured and installed as quickly as possible – preferably within five (5) days after the Construction Manager receives those items. It is acknowledged that some items may be more significant than others in terms of the operation or marketability of the project. It is also acknowledged that unless determined otherwise, the costs incurred by the Construction Manager for procuring, expediting and installing the items covered by 5.4.2.6.2 are reimbursable costs as defined under Article 6 of the Contract. Accordingly, it may be less costly for the Owner, and less disruptive to the operation of the facility, to have several items accumulated and installed at one time rather than have each item installed as it is delivered. Therefore, for each item outstanding as of Substantial Completion, within five (5) days the Construction Manager shall provide the Owner, in writing, with a proposed plan indicating the expected delivery date and proposed installation date for each item. The Owner and Construction Manager will jointly review (and revise as needed) said plan and reach an agreement on the plan. The Construction Manager will report to the Owner on a weekly basis of the status of the items remaining to be installed, and immediately notify the Owner of any change in delivery date or installation date due to unforeseen procurement or delivery problems. If after receiving an outstanding item the Construction Manager fails to commence the Work within five (5) days after agreed upon commencement date, or subsequently fails to complete the Work in accordance with the agreed upon schedule, the Owner may exercise its right to carry out the work as provided in section 2.4 of the A201 General Conditions

.4 The provision stated above for withholding 1.5 times the cost of items outstanding at the time of Substantial Completion does not apply to any Upgrade Options initiated by the Owner subsequent to the decision date established by the Construction Manager for each upgrade option proposed for a given residential unit.

.7 Except for the portions of the project which the Owner has requested completion and occupancy prior to the completion of the Commons Areas in the El Centro building, it is the intent that when developing the Phase Completion Deadlines described in 5.4.2.1 and 5.4.2.2 above, for the purposes of determining what, if any, stipulated damage amount may be owed by Construction Manager, no phase shall be deemed to have achieved Substantial Completion until such time as (1) the common areas (as defined in Amendment No. 1) portion of the Project shall have achieved Substantial Completion or (2) the Owner agrees to deem the phase Substantially Complete or (3) the Owner takes beneficial occupancy of all or part of the phase. Further and accordingly, when establishing the completion dates for each phase as provided for herein by amendment hereto, such amendment shall also provide that no phase shall be deemed complete for the purposes hereof unless (1) and/or until the commons area portion of the Project shall have attained substantial completion, (2) the Owner has agreed to deem the phase Substantially Complete, or (3) the Owner takes beneficial occupancy of all or part of the phase.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be satisfactory to the Owner and Owner's lender. The Owner and the Owner's accountants and the lender and lender's accountant or consultants shall be afforded reasonable access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement and the Project, (collectively "the records") and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. All Records shall be maintained in accordance with generally accepted accounting principles, consistently applied. There shall be an "open book" policy, in effect at all times with regard to all Records relative to the project

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maintained by either the Construction Manager or the Owner, or anyone on their behalf, and each party shall have full and complete access to said Records maintained by the other at all reasonable times. The Construction Manager shall require all Subcontractors and Sub-Subcontractors retained on a cost-plus basis to retain Records and permit the same access by Owner as is required of the Construction Manager under this Article 6.4.

6.4.1.1 If the Owner, Owner's accountants, Lender or Lender's accountants elect to perform an audit of "the records" maintained by Construction Manager, said audit shall be performed within six (6) months of the Final Completion of the project. This stipulation does not affect the Construction Manager's obligation to maintain "the records" for the time period noted in 6.4.1.

6.4.2 If, at any time during construction, any inspection by the Owner or the Lender of the Construction Manager's Records or any other data relating to the contract documents reveals an overcharge or undercharge by the Construction Manager as confirmed by an independent auditor, the next Application for Payment shall be appropriately adjusted by the amount of such overcharge or undercharge and related Fee.

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

Add the following:

7.1.11 To the extent of payments received by the Construction Manager from the Owner, the Construction Manager warrants the real property on which the Project is located will remain free of any legitimate and proper claims of lien arising from the Work performed by or through the Construction Manager. If any such liens are properly recorded, the Construction Manager shall have fifteen (15) business days from its receipt of written notice by the Owner or Owner's agent (including Title company) of such recording within which to discharge or secure by cash deposit or by construction lien transfer bond any such claims of lien. If the Construction Manager fails to discharge or otherwise secure such claim of lien within said time period, the Owner shall be entitled to satisfy the lien or take whatever action it deems appropriate to remove the lien from its property. All reasonable expenses and costs, including reasonable attorney's fees, incurred by the Owner after the abovementioned fifteen (15) day period to effect the discharge, securing and/or removal of any such claims of lien shall be promptly reimbursed to the Owner by the Construction Manager.

7.1.12 Concurrently with each Application for Payment, Construction Manager will deliver to Owner lien waivers (which may be conditioned upon payment) waiving all lien rights in respect of the Project, executed by Construction Manager, and executed by Subcontractors and suppliers covering amounts paid on their account or to be paid with funds received from such Application for Payment. All lien waivers shall be in form and substance satisfactory to Owner and the Owners Lender(s). Additionally, the Construction Manager shall provide further evidence regarding application of each progress payment to payment of all Subcontractors and suppliers providing services or material in respect of the Project, and shall comply with such other reasonable requirements as the Owners Lender(s) may impose with respect to obtaining advances of funds be applied to each Application for Payment."

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ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION

Add the following the following subparagraphs to 9.1.1:

.1 Claims between the parties to this Agreement shall be resolved as set forth below. At all times, the parties shall approach the dispute resolution process in good faith.

.2 In the event of a Claim between the parties, the parties shall promptly meet in good faith to resolve the Claim informally before invoking the dispute resolution procedures outlined elsewhere in the Contract Documents, including the A201 General Conditions and Supplementary Conditions, and below. If the parties are not able to quickly resolve the claim, either party may request participation by the Architect. Both parties shall promptly submit a written summary of its position to the Architect. Upon receipt of both summaries, the Architect shall immediately convene a formal meeting with the parties to further discuss the Claim. If the Claim is not resolved within three business days after the commencement of such meeting, either party may then commence the dispute resolution process defined in the Contract Documents.

.3 If the informal dispute resolution efforts outlined in 9.1.1.2 are not successful, then the dispute resolution procedures outlined in the balance of the Contract Documents. Any mediation conducted pursuant to this Paragraph 9.1 shall be heldin Santa Fe, unless the parties mutually agree otherwise.

.4 Intentionally omitted
.5 Intentionally omitted

.6 Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

.7 Intentionally omitted
.8 *The arbitration shall be held in Santa Fe.*

.9 Notwithstanding anything herein to the contrary, if (1) the Claims involve a proposed, net aggregate payment or reimbursement in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose, an "interested person or entity" means any person or entity if (a) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (b) the interested person or entity is so situated that the disposition of the claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as other wise permitted by the Contract Documents or by law.

ARTICLE 11
OTHER CONDITIONS AND SERVICES

11.1 The Construction Manager recognizes that any Lender involved in financing the Project will have requirements pertaining to this Agreement. The Construction Manager agrees to cooperate with and assist the Owner and the Architect in amending and supplementing the Contract Documents to conform to reasonable and customary requirements of any Lender (to the extent such requirements are acceptable to the Owner). However, the Construction Manager shall not be responsible for actually preparing amendments or supplements to the Contract Documents for any reason at any time. Such amendments or supplements may include, without limitation, provisions:

A. Naming any Lender as an additional insured on the Construction Manager's bonds and insurance policies and providing notice to any Lender of termination, cancellation or material modification of such policies.

B. Requiring approval of Applications for Payment by a consultant designated by a Lender prior to payment.

C. Agreeing not to amend Contract Documents without the reasonable and timely consent of the Lender.

D. Requiring approval of Change Orders by the Lender, provide that Lender approval will be provided on a timely basis and the Owner will use its best efforts to secure such timely approval.

E. Requiring notice of the Owner's default to the Lender, with a Lender having the right to cure, and requiring continued performance by the Construction Manager, provided that the Lender assumes all contract obligations of the Owner.

F. Subordinating any lien rights of the Construction Manager to rights of the Lender.

G. Requiring copies of all written notices to be sent to the Lender.

H. Granting the Lender the right to inspect the work and to examine records pertaining thereto.

I. Recognizing the pledge of the Owner's rights under Contract Documents to the Lender.

J. Requiring the Construction Manager to acknowledge, on the Lender's request, whether or not the Owner is in default of its obligations under the Contract.

K. Requiring the Construction Manager to assist the Owner in preparing and submitting reports and information concerning the Work as may be reasonably required by the Lender.

11.2 Nothing contained in Paragraph 11.2 or Paragraph 11.3 is intended to derogate from any other rights to terminate this Contract that may be granted the Construction Manager elsewhere in this Contract, including, but not limited to, the provisions of Article 2 and Article 14 of the General Conditions and Article 10 of this Agreement.

11.3 The Construction Manager may perform all or any part of the Work with its own forces, or through an Affiliate, provided that (1) the Construction Manager secures at least two competitive bids with respect to the work Construction Manager intends to perform (2) the Owner consents thereto in writing, which consent shall not be unreasonably withheld, after full disclosure by the Construction Manager to the Owner of the affiliation or relationship of the Affiliate to the Construction Manager and (3) any Work performed by an Affiliate shall be covered in a separate agreement between the Construction Manager

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and the Affiliate, which shall satisfy all of the requirements for subcontracts as set forth in Paragraph 5.3 of the General Conditions and which shall be approved by the Owner in writing.

11.4 Any amounts payable hereunder which are not paid when due shall thereafter accrue interest at Wall Street Journal "prime" plus one percent (1%) per annum or at the highest rate allowed under the law of the state where the Project is located, whichever is less.

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit B
Supplementary Conditions to the AIA A201 General Conditions (1997 Edition)

1. The following Supplementary Conditions shall apply to that certain Standard Form of Agreement Between Owner and Construction Manager (the "Agreement") dated

2. For purposes of these Supplementary Conditions, capitalized terms shall have the meaning given to them in the Contract Documents (as such term is defined in Article 1 of the Agreement), unless otherwise defined in these Supplementary Conditions.

3. The following paragraphs supplement, modify, or amend that certain Contract Document entitled "General Conditions of the Contract for Construction," AIA Document A201, Fifteenth Edition, 1997, Articles 1 through 14 inclusive (the "General Conditions"). Where only a portion of any provision of the General Conditions is supplemented, modified, or amended, the remaining portions of that provision shall remain unaltered and in effect. In the event of any inconsistency between the General Conditions and these Supplementary Conditions, the terms of these Supplementary Conditions shall apply. Hereinafter, all references to the General Conditions shall mean the General Conditions as amended by these Supplementary Conditions.

A. INTENTIONALLY OMITTED

B. PARAGRAPH 1.2.4 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.4 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with quality of the surrounding Work and of the construction of the Project generally.

C. PARAGRAPH 1.2.5 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.5 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

D. INTENTIONALLY OMITTED

E. SUBPARAGRAPH 1.5.1, add at the end of the first sentence: ", unless otherwise identified and incorporated by reference in Agreement."

F. SUBPARAGRAPH 2.2.5 Modify Subparagraph 2.2.5 as follows:

"In addition to the sets the Construction Manager used for bidding, the Owner will furnish a to be agreed upon number of sets of black and white prints of the Drawings and copies of the Project Manual free of charge for execution of the Work. Additional sets may be purchased from the Office of the Architect."

G. SUBPARAGRAPH 3.2.3, delete the second sentence, and add at the end: "If the Construction Manager performs Work knowing it involves such error, inconsistency, omission or difference without such notice to the Architect, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributed to correction."

H. PARAGRAPH 3.3 "SUPERVISION AND CONSTRUCTION PROCEDURES" is hereby supplemented by the addition of the following sub-paragraphs:

3.3.4. The Construction Manager shall carefully check its own work and that of Subcontractors as the Work is being performed. The Construction Manager shall ensure that incorrect or faulty Work is corrected as soon as possible but in any event in a timely manner so as not to impact the project schedule.

3.3.5 During the finishing stages of the project, the Construction Manager shall make frequent inspections of the Work in the presence of the Architect or the Owners Representative and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work. The Construction Manager shall ensure that incorrect or faulty Work is corrected in accordance with 3.3.4.

I. PARAGRAPH 3.4 "LABOR AND MATERIALS" is hereby supplemented by addition of the following Subparagraphs 3.4.3 and 3.4.4:

3.4.4 Should the Owner make reasonable objection, based upon qualifications, fitness, behavior or temperament, to the presence of any personnel of Construction Manager or any subcontractor, such person shall not perform services on the Project site, or otherwise in connection with the Project, without written consent of the Owner.

3.4.5 The Construction Manager shall not change or replace the assigned Project Manager or Superintendent without prior written consent by the Owner.

J. SUBPARAGRAPH 3.5.1. Add to the end: "Construction Manager's warranties shall commence upon Substantial Completion of the Work for each Phase and continue for a period of one year thereafter."

K. PARAGRAPH 3.5 "WARRANTY" is hereby supplemented by the addition of the following sub-paragraphs:

3.5.2. In the event of a claim by the Owner against the Construction Manager under Paragraph 3.5.1. of these General Conditions (or under any other express written warranty made by the Construction Manager) for any item of Work performed under the Contract Documents, the Owner shall give notice (a "Warranty Notice") of the claim to the Architect and the Construction Manager and thereafter, the Architect or Architects authorized representative and the Construction Manager shall inspect the item(s) of Work in question. If following its inspection the Architect determines that any such item is included within the Construction Manager's warranty under the Contract Documents, then:

(a) Upon formal notification from the Architect, the Construction Manager shall have thirty (30) days, notwithstanding any other time period specified in the Contract Documents, to either (1) complete the cure for the item or, for a Longer Cure Item, commence the cure and thereafter diligently proceed to complete the cure, or (2) if the Construction Manager disputes the warranty coverage of the item, commence the

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dispute resolution procedures described in Section 4.3 of the General Conditions.

(b) If upon the expiration of the thirty (30) day period the Construction Manager has failed to satisfy the provisions of either clause (a) (1) or clause (a) (2) immediately above, then the Owner shall have the right to engage a third party Construction Manager of the Owner's sole selection to cure or complete the cure of the warranty item at the Construction Manager's expense.

(c) If the Construction Manager fails to cure an item within the required time and if the item is finally determined by arbitration or, when permitted, judicial proceedings to be covered by any Construction Manager's warranty under the Contract Documents, then the Construction Manager shall be liable for all expenses incurred by the Owner in enforcing its warranty claim including legal and Architectural fees and expenses, an administrative charge of a percentage equal to Construction Manager's fee times the cost to cure the warranty item to cover the Owner's administrative costs to enforce the warranty claim, and, when a third party Construction Manager has been engaged by the Owner under this Paragraph 3.5.2, the costs and expenses of the third party Construction Manager.

L. INTENTIONALLY OMITTED

M. ARTICLE 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES is supplemented by the following replacement language for Subparagraph 3.12.4

3.12.4 Shop Drawings, Product Data, Samples and similar submittals which are required by the Contract Documents to be submitted for Architect's review shall become Contract Documents upon Architect's review and approval. Submittals which are not required by the Contract Documents to be submitted for Architect's review are not Contract Documents.

N. ARTICLE 3.16 "ACCESS TO WORK" is hereby supplemented by addition of the following Subparagraph:

"3.16.2 Representatives of the State Agencies shall have access at all reasonable times to the Work wherever it is in preparation or progress, and the Construction Manager shall provide proper facilities for such access and inspection."

O. PARAGRAPH 4.2.4 "COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION" is hereby supplemented by the additions of the following subparagraphs: Nothing contained herein shall prohibit the Owner's Representative from communicating directly with the Construction Manager for the purpose of receiving information and/or providing the Construction Manager with clarification as to Owner's position with regard to any matters affecting or concerning the Work.

4.2.4.1 The following definitions shall apply to construction communications:

4.2.4.1.1 Contract Document Clarifications: An answer from the Architect, in response to an inquiry from the Construction Manager, intended to make some

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requirement(s) of the Drawings or plans clearly understood. Drawing/plan clarifications may be sketches, drawings, or in a narrative form and are not intended to change any requirements of the Contract Documents. Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.2 Non-Conformance Notice: A Notice issued by the Architect documenting that the Work or some portion thereof has not been performed in accordance with the requirements of the Contract Documents. Payment shall not be made on any portion of the Work for which a Non-Conformance Notice has been issued and the Work not corrected to the satisfaction of the Architect.

Upon receipt of a Non-Conformance Notice the Construction Manager shall provide a written Response to the Non-Conformance Notice within five (5) working days after receipt of the Notice. The Construction Manager's response shall state either (a) the basis of Construction Manager's determination that the Work was performed in accordance with the Contract Documents or (b) the corrective action Construction Manager intends to take, at its sole expense, to correct the non-conforming work

If the Construction Manager disputes issuance of the Notice the Architect has five (5) working days in which to respond by either (a) withdrawing the Notice of Non-Conformance or (b) directing the Construction Manager to correct the Work.

If directed to correct the Work, the Construction Manager shall do so within five (5) working days after receipt of such direction from the Architect, or such other time as may be agreed to with the Architect, without loss of rights for claim recovery or dispute resolution as may be available by the Contract.

4.2.4.1.3 Requests for Information: A written request from the Construction Manager or one of its subcontractors, to the Architect, seeking an interpretation or a clarification of some requirement of the Contract Documents. The Construction Manager shall clearly and concisely set forth the issue for which it seeks clarification or interpretation and why a response is needed from the Architect.

Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.4 Substitution/Or-Equal Submittals: A written request from the Construction Manager to substitute a material, article, device, product, fixture, form, type of construction, or process called for in the Contract Documents with another item that shall substantially equal in all respects to that so indicated or supplied. Each such request shall specifically set forth any manner in which the proposed change does not conform to the Contract Documents and Construction Manager (and any subcontractor initiating the request) warrants that the proposed substitute conforms in all respects with the contract documents except as specifically identified as non-conforming in the request.

4.2.4.1.5 Submittals/Shop Drawings: When required by any technical specification included in these Contract Documents, the Construction Manager shall transmit to the Architect technical submittals, shop drawings, or samples, including supporting catalog cuts, manufacturer's literature, sketches or drawings, calculations, and other pertinent, in sufficient detail to enable the Architect to review the information and determine that the Construction Manager clearly understands the requirements of the Contract Documents. Construction Manager (and any subcontractor initiating a submittal) warrants that all Work and materials depicted in technical submittals, shop drawings and samples shall conform in all respects to the requirements of the Contract Documents, except as otherwise specifically identified as non-conforming.

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4.2.4.1.6 Schedule Submittals: When required by the Construction Schedule Specification of these Contract Documents, the Construction Manager shall submit required schedules, schedule updates, schedule revisions, time impact analysis, etc. for review.

P. INTENTIONALLY OMITTED

Q. SUBPARAGRAPH 4.3.7.2 is hereby revised (and paragraphs 4.3.73 and 4.3.7.4 are added) to read as follows:

4.3.7.2 Weather days: Construction Manager confirms that the Contract Time, Phased Contract Time and the agreed upon dates for same as set forth in Amendment No. 1 to this Agreement are reasonable periods to perform The Work. Construction Manager has included in the work schedule ordinary and normally anticipated lost days due to adverse weather ("weather days") and therefore Construction Manager shall not be entitled to an extension of the Contract Time or Phased Contract Time as a result of weather conditions normally experienced in the greater Santa Fe area unless (1) the Construction Manager is unable to make up for the weather delay by scheduling work for a Saturday in accordance with in 4.3.7.2 below, and (2) the number of weather days lost (and not made up by Saturday work) in that calendar month exceeds the number of weather days provided for in the Contract Time.

4.3.7.3 The Construction Manager's work schedule is based upon a regular five-day work week per calendar week. It is mutually agreed that in the event of a weather day the Construction Manager, before requesting a time extension the Construction Manager will first try to make up that weather day on the next Saturday available during the following 30 calendar days. A Saturday will be considered to be "available" only if all of the following conditions are met: (1) no work has already been scheduled for that day that would interfere with the work being rescheduled, (2) it is not a national holiday, (3) working on that Saturday is allowed by local ordinance, and (4) materials and workforce equivalent to what was scheduled for the lost weekday are available on that Saturday. The Construction Manager will only be required to utilize a Saturday if either (a) the Construction Manager incurs no additional cost in rescheduling work for that Saturday, or (b) the Owner agrees to compensate the Construction Manager (by Change Order) for any additional costs (such as for labor rate differential) the Construction Manager may incur.

4.3.7.4 The requirement stated above for the Construction Manager to utilize a Saturday to make up for a weather delay only applies the number of weather days included in each calendar month as indicated in the following list of Anticipated Lost Days. For every weather day beyond the number included below, the Construction Manager shall be entitled to an equivalent number of days extension to the Contract Time. The Construction Manager may (at the CM's sole discretion) attempt to mitigate the delay utilizing additional Saturdays as outlined in 4.3.7.3, but has not obligation to do so.

For the purposes of this Paragraph the table provided below setting forth the norms/anticipated lost weather days shall be utilized by the parties in determining lost weather days:

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Month	Anticipated Lost Days Due to Adverse Weather
January	1
February	1
March	0
April	1
May	0
June	0
July	1
August	1
September	2
October	2
November	1
December	0

See the Exhibit D "Weather Delays" - attached to the Contract.

R. INTENTIONALLY OMITTED

S. SUBPARAGRAPH 4.6.8, add as new subparagraph :

"4.6.8 Limitations of Arbitration. Notwithstanding anything in the Contract Documents to the contrary, if (1) the Claims involve a proposed, net aggregate payment to owner or Construction Manager in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose an "interested person or entity" means any person or entity if (3) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (4) the interested person or entity is so situated that the disposition of the Claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as otherwise permitted by the Contract Documents or by law."

T. SUBPARAGRAPH 5.2.1, change "promptly" to "within 10 days" in lines 5 and 7.

U. PARAGRAPH 7.3 "CONSTRUCTION CHANGE DIRECTIVES"

Subparagraph 7.3.3.3 is hereby changed to read as follows:

7.3.3.3 The following fees apply to Changes to the Work:

7.3.3.3.1 INTENTIONALLY OMITTED

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7.3.3.3.2 The same markup applied by the subcontractor in the subcontractors base subcontract, which shall be defined in said subcontract and subject to Owner's approval, to the cost of work performed by any subcontractor.

V. INTENTIONALLY OMITTED

W. INTENTIONALLY OMITTED

X. PARAGRAPH 9.8.1. of the General Conditions is hereby deleted in its entirety and the following is substituted in lieu thereof:

9.8.1 "Substantial Completion" of the Project shall be deemed to occur when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and, in addition, all requirements of the Contract Documents for Substantial Completion, including the following conditions, have been fulfilled as follows:

a. A Temporary of Final Certificate of Occupancy has been issued and all construction related approvals, licenses and requirements have been obtained or satisfied for the Project such that the Project may be operated for its intended use.

b. INTENTIONALLY OMITTED

Y. PARAGRAPH 9.8.2. of the General Conditions is hereby deleted in its entirety and the following Paragraphs 9.8.2.1. through 9.8.2.8. are substituted in lieu thereof:

9.8.2.1. When the Construction Manager considers that the Work, or portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Following receipt of the Construction Manager's list, the Architect will make an inspection (the "Initial Punch List Inspection") to determine whether the Work or designated portion thereof is Substantially Complete. Upon completion of its Initial Punch List Inspection, the Architect shall prepare and submit to the Construction Manager and the Owner the Architect's list (the "Punch List") of items to be completed or corrected. For the items on the Punch List, the Architect shall specify:

a. a date (a "Punch Item Date") by which such items shall be completed, which Punch Item Date shall be no more than forty-five (45) days from the date of the Punch List unless the Architect determines that reasonable cause exists for a later completion date; and

b. the cost to complete or correct the items as reasonably determined by the Architect.

The Architect shall expressly state on the Punch List what the Construction Manager must do to achieve Substantial Completion under Paragraph 9.8.1 of the General. If as a result of the Initial Punch List Inspection the Architect determines that Substantial Completion has occurred, the Architect shall prepare a Certificate of Substantial Completion pursuant to Paragraph 9.8.2.5 below.

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9.8.2.2 If the Construction Manager has not given notice that the Work is substantially complete and requested inspection thereof on or before the date for Substantial Completion set by the parties in the Contract Documents, then the Owner may request the Architect to make an initial Punch List inspection of the Work to (x) prepare the Punch List pursuant to the provisions of Paragraph 9.8.2.1. above and (y) determine if Substantial Completion has occurred.

9.8.2.3. Upon the request of the Construction Manager prior to the expiration of the relevant Punch Item Date(s) and for good cause shown, the Architect may extend any Punch Item Date(s) for a reasonable period. Following receipt of the Punch List and the Construction Manager's compliance with the requirements of Paragraph 9.8.1. above, the Construction Manager may submit a request for another inspection by the Architect, if necessary, to determine whether Substantial Completion of the Work has been achieved.

9.8.2.4. If the Construction Manager fails to satisfactorily complete any item(s) on the Punch List by the applicable Punch Item Date(s), then the Owner has the right to take over the work in accordance with Section 2.4 of the General Conditions.

9.8.2.5.When the requirements of Paragraph 9.8.1. above have been met and upon the request of either the Owner or the Construction Manager, the Architect shall prepare a Certificate of Substantial Completion, in the form set out in Paragraph 9.8.3 below, which shall establish the date of Substantial Completion and shall establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise specifically stated in the Contract Documents or in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Construction Manager for their written acceptance of responsibilities assigned to them in such certificate.

Z. INTENTIONALLY OMITTED

AA. In addition to the provisions of Paragraph 9.10 Final Completion shall not have been deemed to have occurred until the date upon which all of the following have occurred:

a. INTENTIONALLY OMITTED

b. Delivery of conditional or unconditional lien waivers from each person who performed work at or provide or fabricated materials in connection with the Work (including all subcontracts executed in connection therewith), other than from those persons whose claims are being contested by Construction Manager in good faith and for which Construction Manager has provided to Owner a bond or security in an amount reasonably acceptable to Owner, and

c. Issuance and obtaining of a final, unconditional certificate of occupancy and all construction-related approvals, licenses, and requirements for the Project enabling it to be occupied and operated for its intended use.

BB. SUBPARAGRAPH 9.10.4.1, after "Claims" add: "previously made in writing and identified by Owner as unsettled at the time of final payment."

CC. Paragraph 10.1.1 add the following: "Construction Manager shall prepare and submit to Owner for Owner's approval a comprehensive safety program. Further, Construction Manager shall provide written verification and certification in a form satisfactory to the

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Owner, that all subcontractors have familiarized themselves with the safety program and agreed to abide by said program and training regimen thereunder.

DD. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." In the first line of Subparagraph 11.1.1, following the work " companies," insert the following:

", acceptable to the Owner,."

EE. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." Add the following to subparagraph 11.1.3:

"Certificates called for herein shall be furnished in duplicate and shall specifically set forth evidence of all coverage required by 11.1.2 and the Construction Manager shall furnish to the Architect copies of all endorsements that are subsequently issued amending coverage or limits."

FF. SUBPARAGRAPH 13.4.3. add as a new subparagraph:

"In the event of any litigation between the parties, the prevailing party shall be entitled to reimbursements for all reasonable attorneys' fees, expert fees, court costs, and all other third-party costs of the litigation incurred by the prevailing party to the extent allowed by law."

GG. PARAGRAPH 13.5 "TESTS AND INSPECTIONS" is hereby supplemented by the addition of the following subparagraph:

"13.5.7 When work has been installed contrary to any Contract requirements and the Construction Manager requests the privilege of testing in lieu of removal, such testing shall be at the Construction Manager's expense."

HH. INTENTIONALLY OMITTED

II. Add the following new Article:

ARTICLE 15: REQUESTS FOR INFORMATION

15.1.1 In the event that the Construction Manager or its subcontractor, at any tier, determines that some portion of the Drawings, Specifications, or other Contract Documents requires clarification or interpretation by the Architect, the Construction Manager shall submit a Request for Information in writing to the Architect. Requests for Information may only be submitted by the Construction Manager and shall be only submitted on the Request for Information Forms provided by the Architect. The Construction Manager shall clearly and concisely set forth the issue for which clarification and interpretation is sought and why a response is needed from the Architect. If the Request for Information is being used to request confirmation of an interpretation or understanding of a requirement, the Construction Manager shall set forth that interpretation or understanding of the requirement along with reasons why such an understanding was reached.

15.1.2 The Architect will review all Requests for Information to determine whether they are Requests for Information within the meaning of this term. If the Architect determines

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that the document is not a Request for Information, it will be returned to the Construction Manager, unreviewed as to content, for resubmittal on the proper form and in the proper manner. In either case, the Architect must reply to RFI in writing within the time requested by the Construction Manager, or three (3) working days, whichever is earlier.

15.1.3 Responses from the Architect are not intended to change any requirement of the Contract Documents. In the event the Construction Manager believes that a response to a Request for Information will cause a change to the requirements of the Contract Document, the Construction Manager shall immediately give written notice to the Architect in accordance with Section 4 of the General Conditions stating that the Construction Manager considers the response to be a change in the scope of work or a change to the project schedule..

END OF SUPPLEMENTARY CONDITIONS

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit "C"

Weather Delays

1. A "Work Day" is defined at Monday thru Friday, 7:30 am– 4:400 pm.

2. The occurrence of one or more of the following will constitute a weather delay as indicated:

    a. 0.25" of rain during the workday constitutes one lost workday
    b. 2.0" of snow during the workday constitutes one lost workday
    c. 12" of snow in a 24-hour period constitutes two lost workdays.
    d. Temperature of 5 degrees below zero (Fahrenheit) constitutes one lost workday.
    e. Any drying time required for soil stabilization (as directed by the geotechnical engineer) due to rain or snow will constitute lost work day(s).

3. Weather days will be included in the final schedule approved as part of the GMP proposal to be incorporated into the contract by amendment. The number of weather days included will be in accordance with Section 3.P of Exhibit B. Adjustments to the contract completion dates due to adverse weather will be made in accordance with Section 3.P of Exhibit B.

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RainbowVision Santa Fe/Wels Contract Agreement
Exhibit "D"
Personnel Billing Rates

Position	Reimbursable as a Cost of the Work (w/in GMP)	Included in Fee	Notes	Expected to be Full or Part Time	Billing Rate ($/hr)
Field Staff Stationed on Site					
Superintendent	X		1	Full	$70
Project Engineer, QA/QC	X		1	Full	$60
Carpenter	X		2	Full	Varies - local rate
Laborer	X		2	Full	Varies - local rate
Personnel Not Stationed on Site					
Vice President		X			
CFO		X			
Project Manager	X		3	Part	$75
General Superintendent	X		3	Part	$75
Project Coordinator		X			
Safety Director	X		3	Part	$50
Project Accountant		X			
Pre-Construction Personnel					
Senior Estimator/Pré-Con Services M	X		4	Part	$90
Assistant Estimator	X		4	Part	$60

Notes:
1 Field staff on project site.
2 It is expected that all trade work will be subcontracted. Trade labor rates shown only if need for Gen Conditions.
3 Billed only for time spent on site and traveling to project
4 Billed only for time during pre-construction phase, subject to Pré-construction services billing cap (see Exhibit F).

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit E
Project Scope & Budget Summary

- The Scope of the project includes:
  - 40 Single-story Condominium living units
  - 80 Single-level Independent Living units built in a series of two-story buildings
  - 26 Assisted Living apartments (and related support spaces) constructed on the 2nd level of the central services building
  - Central services building (El Centro) containing commercial kitchen, dinning spaces, activity spaces, administrative and marketing offices, retail spaces, and a spa/wellness center.
  - 13 acres of site development, with some off-site, public improvements
  - Total building area is approximately 183,000 sf.

- Based on a preliminary site plan and building design commissioned by the Owner, the Construction Manager prepared a detailed, preliminary cost report and presented that report to the Owner on February 1, 2004. Based on that scope and cost report, the Owner has established a construction budget of $20,540,000, based on the Preliminary Divisional Cost Breakdown shown in Exhibit F.
- The Owner has contracted with the Architect to complete the design of the project in accordance with the budget stated above. The completion of the design, and related activities is proceeding in accordance with the Preconstruction Phase Schedule prepared and updated regularly by the Construction Manager. See Exhibit G.

- The Construction Manager has also prepared a Preliminary Construction Schedule. See Exhibit H. A final Construction Schedule will be included in the GMP report and made part of the contract by amendment.

- The Owner, Architect and Construction Manager are working together to monitor the completion of the design to ensure meeting the Construction Budget.

- Upon receipt of the Design Development documents, the Construction Manager will, in accordance with contract Section 2.2 prepare a GMP report that will include all of the elements outlined in Section 2.2.4. Prior to submitting the final GMP report, the Construction Manager will review the preliminary cost estimates with the Owner and Architect to determine if any adjustments to scope are required in order to achieve the construction budget stated above. Upon approval by the Owner, the GMP will be incorporated into the contract by amendment, in accordance with Section 2.2.

- During the completion of the design The Construction Manager will continue to meet regularly with the Owner and Architect, and will regularly review the Architect's work in progress to monitor the design as a means to ensure conformance to the construction budget.

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RainbowVision Santa Fe/Wels Contract Agreement
EXHIBIT F

Preliminary Divisional Cost Breakdown

C.S.I. SYSTEMS BREAKDOWN		Total Costs	%
Division 1 - General Conditions		$1,047,401	5.9%
Division 1 - Building Permit Allowance		$184,620	1.0%
Division 2 - Site Construction		$1,534,319	8.7%
Division 3 - Concrete		$965,149	5.5%
Division 4 - Masonry		$488,508	2.8%
Division 5 - Metals		$439,822	2.5%
Division 6 - Woods & Plastics		$2,609,476	14.8%
Division 7 - Thermal & Moisture Protection		$969,353	5.5%
Division 8 - Doors & Windows		$771,105	4.4%
Division 9 - Finishes		$3,286,198	18.6%
Division 10 - Specialties		$592,969	3.4%
Division 11 - Equipment (See Note 1)		$445,320	2.5%
Division 12 - Furnishings (See Note 2)		$49,196	0.3%
Division 14 - Conveying		$230,919	1.3%
Division 15 - Mechanical		$2,410,820	13.7%
Division 16 - Electrical		$1,636,100	9.3%
Sub-Total		$17,661,276	100%
Escalation - For 2004	0.0%	-	
Sub-Total		$17,661,276	
Est./Const Contingency - El Centro	5.0%	$243,521	
Est./Const Contingency - Balance	3.0%	$383,726	
Sub-Total		$18,288,523	
Builders Risk Insurance	0.8%	$146,308	
Liability Insurance	0.85%	$156,696	
		$18,591,527	
Construction Manager Fee	3.00%	$557,746	
Sub-Total		$19,149,273	
Performance and Payment Bond		$106,393	
NM Gross Receipts Tax		$1,284,062	
Project Totals		**$20,539,728**	

Notes:

1. "Equipment" includes residential appliances, commerical kitchen and laundry equipment.
2. "Furnishings" does not include FF&E - which is being designed and purchased by the Owner under a separate contract.

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit G
Preconstruction Phase Schedule

Refer to the "Preconstruction Schedule" dated , (filename: RVSF007), attached separately but made a part of this Exhibit by reference.

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit H
Preliminary Construction Phase Schedule

Refer to the "Preliminary Construction Schedule" dated (filename:), attached separately but made a part of this Exhibit by reference.

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Amendment No. 1
(Revised December 15, 2004)
To Contract Agreement Between
RainbowVision Santa Fe, LLC and Weis Builders, Inc

In accordance with article 2.2.9 of the Contract Agreement, the Guaranteed Maximum Price (GMP) and Project Schedule are hereby modified to reflect the following:

- The Guaranteed Maximum Price will be Twenty-One Million Five Hundred Thirty Nine Thousand, Seven Hundred Twenty-Eight Dollars ($21,539,728).
- The Construction Start date will be January 3, 2005. Based on that start date:
- The Substantial Completion date for Buildings 16, 17, 18, 19, and 20 will be October 28, 2005.
- The Substantial Completion date for the balance of the project will be April 26, 2006.

Accordingly, the GMP Divisional Cost Breakdown (Exhibit F) shall be modified as per the attached revision, dated September 30, 2004. The revised GMP is based on the following:

- Weis September 15, 2004 "Confirmation of GMP" letter (with attachments)
- Weis September 30, 2004 "Summary of Approved Enhancements"

The Construction Schedule (Exhibit H) shall be as shown in the attached update, dated December 15, 2004.

For: RainbowVision Santa Fe, LLC	For: Weis Builders Inc.
(Signature)	Pete Whitfield (Signature)
(Printed Name and Title)	PETE WORTHINGTON, VICE PRESIDENT (Printed Name and Title)
(Date)	Dec-15, 2004 (Date)

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EXHIBIT 5

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

ENDORSED
First Judicial District Court

MAR 07 2008

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

RAINBOWVISION SANTA FE, LLC,

Plaintiff,

vs.

NO. D-0101-CV 2007-00010

WEIS BUILDERS, INC.,
PCI CONTRACTORS, INC., and RLA, INC.

Defendants.

and

WEIS BUILDERS, INC.

Third Party Plaintiff,

vs.

HSH NORDBANK AG,
SIMS RAINBOWVISION LLC,
LOS ALAMOS NATIONAL BANK,
VALLEY NATIONAL BANK,
LES FILE DRYWALL, INC.,
RODGERS PLUMBING AND HEATING CO. INC.,
DOMINGUEZ CARPET AND TILE, INC.,
EKER BROTHERS, INC.,
T L C COMPANY, INC.,
EMCO, Inc.,
SUPERIOR CONTRACTING CORPORATION, D/B/A AMERICAN NATIONAL INSULATION AND SEALANTS,
BMCW SOUTHCENTRAL, L.P. D/B/A BMC CONSTRUCTION,
BBD CONSTRUCTION, L.P., as successor in interest to or assignee of BMC CONSTRUCTION,
MAVERICK FRAMING, INC., as successor in interest to or assignee of BMC CONSTRUCTION, and
RLA, Inc.

Third Party Defendants.

SECOND AMENDED THIRD PARTY COMPLAINT

Weis Builders Inc. ("WBI") as Third Party Plaintiff, makes this Second Amended Third Party Complaint.

1. WBI is a Minnesota corporation duly and validly licensed in the State of New Mexico.

2. HSH Nordbank AG is a lending institution located in New York, NY.

3. Los Alamos National Bank is a banking institution in Los Alamos, New Mexico organized and existing under the laws of the United States of America.

4. Valley National Bank is a banking institution in Espanola, New Mexico organized and existing under the laws of the United States of America.

5. Les File Drywall is a New Mexico corporation with its principal place of business in Albuquerque, New Mexico.

6. Rodgers Plumbing and Heating Co., Inc. is a New Mexico corporation with its principal place of business in Albuquerque, New Mexico.

7. Dominguez Carpet And Tile, Inc. is a New Mexico corporation with its principal place of business in Santa Fe, New Mexico.

8. Eker Brothers, Inc. is a New Mexico Corporation with its principal address in Santa Fe, New Mexico, and its registered agent in Albuquerque, New Mexico.

9. T L C Company, Inc. is a New Mexico Corporation with its principal place of business in Albuquerque, New Mexico.

10. Upon information and belief EMCO, Inc. is a New Mexico Corporation with a place of business in Santa Fe, New Mexico and licensed to do business in the State of Mexico.

11. Upon information and belief, Superior Contracting Corporation, D/B/A American National Insulation And Sealants is New Mexico Corporation with a place of business in

Albuquerque, New Mexico and licensed to do business in the State of Mexico.

12. Upon information and belief, BMCW Southcentral, L.P. D/B/A BMC Construction is a Texas Company doing business in the state of New Mexico.

13. Upon information and belief, BBD Construction, L.P., is Texas Limited Partnership doing business in the state of New Mexico and is a successor in interest to or assignee of BMC Construction.

14. Upon information and belief, Maverick Framing, Inc., is a Texas corporation registered to do business in the state of New Mexico that is the assignee of the subcontract or a successor in interest to BMC Construction regarding BMC's work on the Project.

15. Upon information and belief, RLA, Inc. is a New Mexico Corporation with its principal place of business in Bernalillo County, New Mexico.

16. On or about April 28, 2004, WBI and RainbowVision Santa Fe, LLC ("RVSF") entered into a contract under which WBI agreed to provide certain construction services, labor, and materials for work specified in the contract (the "Contract") for the RainbowVision Santa Fe Retirement Community (the "Project"), in Santa Fe, New Mexico, in return for compensation for its services. A true and correct copy of the Contract is being served with this pleading as Exhibit 1 pursuant to Rule 1-009(I) NMRA.

17. RVSF has improperly withheld payment from WBI.

18. RVSF has not paid the retainage to WBI.

19. An unpaid balance of at least $1,522,319, (reduced by partial payments since the original filing to $ 730,403.77) which includes, among other things, the unpaid Contract balance (including retainage) and additional contract adjustments is currently owed to

WBI for the reasonable value of its improvements to the Property, together with interest, costs, disbursements, and reasonable attorneys' fees.

20. On or about February 2, 2007, WBI filed a Claim of Lien in the sum of $1,522,319.00, plus legal fees, costs, and interest upon the Property for amounts owed WBI for its improvements to the Property), which Claim of Lien was recorded as Instrument #1469461 in the records of Santa Fe County. A true and correct copy of WBI's Claim of Lien is being served with this pleading as Exhibit 2 pursuant to Rule 1-009(I) NMRA.

21. The Project is located on real property located at 500 Rodeo Road, Santa Fe New Mexico (the "Property") and more particularly described as:

> That certain tract of land within Section 11, Township 16 North, Range 9 East, NMPM per plat 605/24 bearing uniform property code number 1-053-095-353-509

22. WBI specifically excepts from its Claim of Lien the following condominiums:

Unit 110, Instrument No. 1437694, records of Santa Fe County, New Mexico.
Unit 111, Instrument No. 1431907, records of Santa Fe County, New Mexico.
Unit 112, Instrument No. 1431358, records of Santa Fe County, New Mexico.
Unit 113, Instrument No. 1431744, records of Santa Fe County, New Mexico.
Unit 120, Instrument No. 1438953, records of Santa Fe County, New Mexico.
Unit 121, Instrument No. 1432827, records of Santa Fe County, New Mexico.
Unit 122, Instrument No. 1431782, records of Santa Fe County, New Mexico.
Unit 123, Instrument No. 1431910, records of Santa Fe County, New Mexico.
Unit 210, Instrument No. 1434135, records of Santa Fe County, New Mexico.
Unit 211, Instrument No. 1440074, records of Santa Fe County, New Mexico.
Unit 220, Instrument No. 1434302, records of Santa Fe County, New Mexico.
Unit 221, Instrument No. 1432831, records of Santa Fe County, New Mexico.
Unit 310, Instrument No. 1433860, records of Santa Fe County, New Mexico.
Unit 311, Instrument No. 1431746, records of Santa Fe County, New Mexico.
Unit 312, Instrument No. 1432634, records of Santa Fe County, New Mexico.
Unit 313, Instrument No. 1432625, records of Santa Fe County, New Mexico.
Unit 111, Instrument No. 1431907, records of Santa Fe County, New Mexico.
Unit 410, Instrument No. 1434300, records of Santa Fe County, New Mexico.
Unit 411, Instrument No. 1431909, records of Santa Fe County, New Mexico.
Unit 412, Instrument No. 1431357, records of Santa Fe County, New Mexico.
Unit 413, Instrument No. 1432007, records of Santa Fe County, New Mexico.
Unit 510, Instrument No. 1433009, records of Santa Fe County, New Mexico.
Unit 511, Instrument No. 1431899, records of Santa Fe County, New Mexico.
Unit 521, Instrument No. 1431361, records of Santa Fe County, New Mexico.

Unit 1110, Instrument No. 1433094, records of Santa Fe County, New Mexico.
Unit 1111, Instrument No. 1435053, records of Santa Fe County, New Mexico.
Unit 1120, Instrument No. 1438955, records of Santa Fe County, New Mexico.
Unit 1121, Instrument No. 1432829, records of Santa Fe County, New Mexico.
Unit 1210, Instrument No. 1431658, records of Santa Fe County, New Mexico.
Unit 1211, Instrument No. 1432825, records of Santa Fe County, New Mexico.
Unit 1213, Instrument No. 1434137, records of Santa Fe County, New Mexico.
Unit 1410, Instrument No. 1431748, records of Santa Fe County, New Mexico.
Unit 1412, Instrument No. 1434459, records of Santa Fe County, New Mexico.
Unit 1511, Instrument No. 1431362, records of Santa Fe County, New Mexico.
Unit 1512, Instrument No. 1434580, records of Santa Fe County, New Mexico.
Unit 1610, Instrument No. 1406282, records of Santa Fe County, New Mexico.
Unit 1611, Instrument No. 1405660, records of Santa Fe County, New Mexico.
Unit 1612, Instrument No. 1405424, records of Santa Fe County, New Mexico.
Unit 1613, Instrument No. 1405423, records of Santa Fe County, New Mexico.
Unit 1710, Instrument No. 1405659, records of Santa Fe County, New Mexico.
Unit 1711, Instrument No. 1406128, records of Santa Fe County, New Mexico.
Unit 1712, Instrument No. 1405655, records of Santa Fe County, New Mexico.
Unit 1713, Instrument No. 1406704, records of Santa Fe County, New Mexico.
Unit 1810, Instrument No. 1405428, records of Santa Fe County, New Mexico.
Unit 1811, Instrument No. 1405906, records of Santa Fe County, New Mexico.
Unit 1812, Instrument No. 1405564, records of Santa Fe County, New Mexico.
Unit 1813, Instrument No. 1405565, records of Santa Fe County, New Mexico.
Unit 1911, Instrument No. 1406812, records of Santa Fe County, New Mexico.
Unit 1912, Instrument No. 1405657, records of Santa Fe County, New Mexico.
Unit 1913, Instrument No. 1420278, records of Santa Fe County, New Mexico.
Unit 2010, Instrument No. 1405566, records of Santa Fe County, New Mexico.
Unit 2011, Instrument No. 1405190, records of Santa Fe County, New Mexico.
Unit 2012, Instrument No. 1405557, records of Santa Fe County, New Mexico.
Unit 2013, Instrument No. 1405530, records of Santa Fe County, New Mexico.

23. HSH Nordbank AG claims or may claim an interest in the Property subject to the Claim of Lien by virtue of the Real Estate Mortgage with Assignment of Rents and Security Agreement and Fixture Filing recorded with the Santa Fe County Clerk December 21, 2004 as document number 1359754 and by virtue of UCC filings with the Santa Fe County Clerk December 21, 2004, as document number 1359845.

24. Los Alamos National Bank claims or may claim an interest in the Property subject to the Claim of Lien by virtue of the Line of Credit Mortgage recorded with the Santa Fe County Clerk on January 5, 2004 as document numbered 1308585 and Mortgage Modification Agreement recorded with the Santa Fe County Clerk on July 30, 2004, as document 1339736 and by virtue of the Real Estate Mortgage with Assignment

of Rents and Security Agreement and Fixture Filing recorded with the Santa Fe County Clerk December 21, 2004 as document number 1359845.

25. Sims Rainbowvision LLC claims or may claim an interest in the Property subject to the Claim of Lien by virtue of the Real Estate Mortgage with Assignment of Rents and Security Agreement and Fixture Filing recorded with the Santa Fe County Clerk December 21, 2004 as document number 1359845.

26. Los Alamos National Bank and Valley National Bank jointly claim or may claim an interest in the Property by virtue of the Mortgage recorded with the Santa Fe County Clerk on January 31, 2007 as document number 14690069 and by virtue of the Assignment of Leases and Rents recorded with the Santa Fe County Clerk on January 31, 2007 as document number 14690069.

27. Les File Drywall, Inc. claims or may claim an interest in the Property by virtue of the Claim of Lien recorded with the Santa Fe County Clerk on February 23, 2007, as document number 1472023.

28. All of the Third Party Defendants are subject to the jurisdiction and venue of the Court by virtue of their interests in real property within the County of Santa Fe.

CONTRIBUTION AND INDEMNITY

(LES FILE DRYWALL, INC.; RODGERS PLUMBING & HEATING CO. INC.; DOMINGUEZ CARPET AND TILE, INC.; EKER BROTHERS, INC.; AND T L C COMPANY, INC., EMCO, Inc., SUPERIOR CONTRACTING CORPORATION, D/B/A AMERICAN NATIONAL INSULATION AND SEALANTS, BMCW SOUTHCENTRAL, L.P. D/B/A BMC CONSTRUCTION, BBD CONSTRUCTION, L.P., as successor in interest to or assignee of BMC CONSTRUCTION, and MAVERICK FRAMING, INC., as successor in interest to or assignee of BMC CONSTRUCTION, PCI Contractors, Inc., and RLA, Inc.)

29. WBI realleges and incorporates by reference Paragraphs 1 through 27 of its Amended Third-Party Complaint.

30. WBI asserts a claim for contribution and indemnity against Les File Drywall, Inc., Rodgers Plumbing & Heating Co., Inc. Dominquez Carpet and Tile, Inc., Eker Brothers, Inc., T L C Company, Inc., EMCO, Inc., Superior Contracting Corporation, D/B/A American National Insulation And Sealants, BMCW SouthCentral, L.P. D/B/A BMC Construction, BBD Construction, L.P., as successor in interest to or assignee of BMC Construction, Maverick Framing, Inc., as successor in interest to or assignee of BMC Construction), and RLA, Inc. (collectively, the "Third-Party Complaint Indemnity Subcontractors").

31. WBI entered into separate subcontracts (collectively, the "Subcontracts") with the Third-Party Complaint Indemnity Subcontractors under which the Third-Party Complaint Indemnity Subcontractors agreed to furnish certain labor and materials in connection with the work that WBI agreed to perform for its Contract with the Owner, Rainbow Vision Santa Fe, LLC ("RVSF").

32. Pursuant to the Subcontracts, the Third-Party Complaint Indemnity Subcontractors agreed, among other things:

> To save harmless the Contractor, the Owner and all other subcontractors from any and all losses or damage (including without limiting the generality of the foregoing, legal fees and disbursements paid or incurred by the Contractor to enforce the provisions of this paragraph) occasioned by the failure of the Subcontractor to carry out the provisions of this Subcontract.

(Subcontracts, ¶ 1. G.)

33. RVSF has brought a Complaint against WBI, alleging, among other things, that the work on the Project was not completed in a workmanlike manner, defective work has not been remedied, Contract warranty obligations have not been honored, and that substantial completion was not achieved within the times specified in the Contract.

34. The purported damages referred to in Plaintiff RVSF's Complaint, if any, were caused by the conduct of the Third-Party Complaint Indemnity Subcontractors insofar as the Third-Party Complaint Indemnity Subcontractors performed defective work that did not meet industry standards, failed to remedy defective work, failed to honor their warranty obligations, and failed to perform their work within the times specified in the Contract.

35. If RVSF has suffered any loss or damage as alleged in its Complaint or otherwise for work performed for the Third-Party Complaint Indemnity Subcontractors, and such liability is expressly denied by WBI, then such loss or damage was directly caused by the negligence, breach of contract, breach of warranty, products liability, or other fault or improper action of the Third-Party Complaint Indemnity Subcontractors.

36. If WBI is found to have any liability to RVSF for work performed by the Third-Party Complaint Indemnity Subcontractors, and such liability is specifically denied, then WBI is entitled to contribution or indemnity from the Third-Party Complaint Indemnity Subcontractors pursuant to equitable principles and the express and implied terms of contractual agreements.

37. WBI is entitled to entry of judgment in its favor and against the Third-Party Complaint Indemnity Subcontractors, based upon principles of contribution and indemnity, for an amount equal to any liability on RVSF's claims regarding the Third-Party Complaint Indemnity Subcontractors' work, although such liability is denied. WBI

is further entitled to entry of judgment in its favor and against the Third-Party Complaint Indemnity Subcontractors for an amount equal to the attorneys' fees and costs incurred to defend against RVSF's claims.

BREACH OF CONTRACT

(Les File Drywall, Inc.; Rodgers Plumbing & Heating Co. Inc.; Dominguez Carpet And Tile, Inc.; Eker Brothers, Inc.; T L C Company, Inc., EMCO, Inc., Superior Contracting Corporation, D/B/A American National Insulation and Sealants, BMCW SouthCentral, L.P. D/B/A BMC Construction, BBD Construction, L.P., as successor in interest to or assignee of BMC Construction, Maverick Framing, Inc., as successor in interest to or assignee of BMC Construction, PCI Contractors, Inc., and RLA, Inc.)

38. WBI realleges and incorporates by reference Paragraphs 1 through 37 of its Amended Third-Party Complaint.

39. WBI entered into valid and binding contracts with Les File Drywall, Inc.; Rodgers Plumbing & Heating Co. Inc.; Dominguez Carpet And Tile, Inc.; Eker Brothers, Inc.; T L C Company, Inc., EMCO, Inc., Superior Contracting Corporation, D/B/A American National Insulation And Sealants, BMCW SouthCentral, L.P. D/B/A BMC Construction, BBD Construction, L.P., as successor in interest to or assignee of BMC Construction, Maverick Framing, Inc., as successor in interest to or assignee of BMC Construction, PCI, Inc., and RLA, Inc. (the "Third-Party Complaint Subcontractors").

40. Pursuant to their respective Subcontracts, the Third-Party Complaint Subcontractors expressly and/or impliedly agreed, among other things:

a. To furnish all labor, material, skill and equipment necessary or required and to perform all the work required under the Subcontract;

b. To perform all work in a good and workmanlike manner;

c. To timely perform all work in accordance with the Project schedule;

d. To guarantee the Subcontract to the same extent that the Contractor is obligated to guarantee its work under the General Contract;

e. To save harmless the Contractor and all other subcontractors from any and all losses or damage (including without limiting the generality of the foregoing, legal fees and disbursements paid or incurred by the Contractor to enforce the provisions of this paragraph) occasioned by the failure of the Subcontractor to carry out any provision of the Subcontract;

f. To accept responsibility for all damage caused by the Subcontractor;

g. To comply with all Federal and State laws, codes, and regulations and all municipal ordinances and regulations;

h. To timely perform all punch list work, and

i. To save Weis harmless from any loss.

41. The Third-Party Complaint Subcontractors have breached their respective Subcontracts including without limitation, each of the obligations described above in Paragraph 40.

42. As a result of the Third-Party Complaint Subcontractors breaches, WBI has incurred damages in an amount to be determined at trial plus interest, costs, disbursements, and attorneys' fees.

43. WBI is entitled to judgment in its favor and against each of the Third-Party Complaint Subcontractors for an amount to be determined, plus interest, costs, disbursements, and attorneys' fees.

WHEREFORE, Weis Builders, Inc. respectfully requests the Court to enter judgment as follows:

a. That the Claim of Lien of WBI be adjudged a proper lien on the Property for the amounts set forth above and that it be adjudged paramount and superior to the interest of any others and the same be foreclosed.

b. That any other persons claiming, by through or under them be barred and forever foreclosed of all right, interest, or claim in or to the Property.

c. That the Property be sold under the direction of the Court by a Special Master appointed for such purpose and the proceeds of such sale be applied in the priority provided in the WBI's Claim of Lien and according to law, and the excess, if any, of the proceeds of the sale over the amount due to WBI, after inclusion of costs of sale including Special Master's fees, be distributed according to law and the further order of the Court.

d. That WBI be given the right to become a purchaser at the sale, and that the purchaser at the sale be let into possession of the Property.

e. That WBI have a deficiency judgment for the amount of any deficiency, if the proceeds of such sale are not sufficient to satisfy the amount due and owing WBI as set forth above.

f. That WBI have judgment for all costs expended herein until the time of sale, including costs of sale of the Property pursuant to judgment of foreclosure, and such other and further relief as the Court may deem just and proper.

g. Judgment in favor of WBI and against Les File Drywall, Inc., Rodgers Plumbing & Heating Co., Inc. Dominquez Carpet and Tile, Inc., Eker Brothers, Inc., T L C Company, Inc., EMCO, Inc., Superior Contracting Corporation, D/B/A American National Insulation And Sealants, BMCW

SouthCentral, L.P. D/B/A BMC Construction, BBD Construction, L.P., as successor in interest to or assignee of BMC Construction, Maverick Framing, Inc., as successor in interest to or assignee of BMC Construction, PCI, Inc., and RLA, Inc. on WBI's claim against Les File Drywall, Inc., Rodgers Plumbing & Heating Co., Inc. Dominquez Carpet and Tile, Inc., Eker Brothers, Inc., T L C Company, Inc., EMCO, Inc., Superior Contracting Corporation, D/B/A American National Insulation And Sealants, BMCW SouthCentral, L.P. D/B/A BMC Construction, BBD Construction, L.P., as successor in interest to or assignee of BMC Construction, Maverick Framing, Inc., as successor in interest to or assignee of BMC Construction, PCI, Inc., and RLA, Inc. for contribution and indemnity, including attorneys' fees and costs incurred to defend against RVSF's claims.

h. Judgment in favor of WBI and against Les File Drywall, Inc., Rodgers Plumbing & Heating Co., Inc., Dominquez Carpet and Tile, Inc., Eker Brothers, Inc., T L C Company, Inc., EMCO, Inc., Superior Contracting Corporation, d/b/a American National Insulation And Sealants, BMCW SouthCentral, L.P. d/b/a BMC Construction, BBD Construction, L.P., as successor in interest to or assignee of BMC Construction, Maverick Framing, Inc., as successor in interest to or assignee of BMC Construction, PCI, Inc., and RLA, Inc. for breach of contract, including attorneys' fees and costs.

i. As part of any judgment or order in favor of WBI, an award to WBI of its costs, disbursements, and attorneys' fees; and

j. Any such other legal or equitable relief as the Court deems just.

Respectfully submitted,

RHODES & SALMON, P.C.

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Certificate of Service

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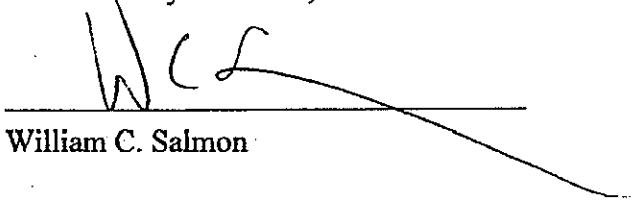
on this 7th day of March, 2008.



William C. Salmon

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AIA® Document A121™CMc – 2003 and AGC Document 565

Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor

AGREEMENT
made as of the Twenty Eighth day of April in the year of Two Thousand and Four
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

RainbowVision Santa Fe LLC
4001 Office Court Road,
Suite 403
Santa Fe, NM 87505

and the Construction Manager:
(Name and address)

Weis Builders, Inc.
7645 Lyndale Avenue South
Minneapolis, MN 55423

The Project is:
(Name, address and brief description)

RainbowVision Santa Fe Retirement Community
500 Rodeo Road at Antigua
Santa Fe, NM 87505

The Architect is:
(Name and address)

Lloyd & Associates Architects
301 N. GuadalupeSuite 104
Santa Fe, NM 87501

The Owner and Construction Manager agree as set forth below:

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

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

The 1997 Edition of AIA® Document A201™, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

EXHIBIT
1

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™–1997, *General Conditions of the Contract for Construction, which is incorporated herein by reference.* For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™–1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™–1997 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

§ 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

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§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

~~§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the~~ Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of

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the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

.2 A list of allowances and a statement of their basis.

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents Issuance dates upon which the date of Substantial Completion is based.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

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(1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
(2) the Owner's first authorization to the Construction Manager to:
(a) award a subcontract, or
(b) undertake construction Work with the Construction Manager's own forces, or
(c) issue a purchase order for materials or equipment required for the Work.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™–1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

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ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

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§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials; ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™–1997, the Architect does not have such authority.

§ 3.3 ARCHITECT

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The Owner shall authorize and cause the Architect to provide Additional Services , requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be

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provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS
The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION
§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

The Construction Manager's fee for Preconstruction Phase Services shall be Seven Thousand Dollars ($7,000), in accordance with Weis's 1/22/03 letter of intent.

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond April 1, 2004 in accordance with Weis's 12/22/03 letter of intent.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 4.2 PAYMENTS
§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable Thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

Interest rate shall be 4% above US Bancorp Prime Rate.
(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

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§ 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

Base Fee will be Three percent (3.0%) of the Cost of the Work as defined in Article 6. For changes in the Work not associated with any " Resident Upgrade Packages" that are to be offered on a unit-by-unit basis, the fee for additive changes will be 3.0% and for deductive changes the fee will be 0.0%.

5.1.2

In addition to the basic fees in 4.1.1 and 5.1.1 above, the Owner shall pay the Construction Manager a Resident Upgrade Fee equal to 15% of the cost of the work, toether with such reasonable administrative costs that the Construction Manager will incur directly related to the performance of such work, associated with the Resident Upgrade Packages that the Owner is planning to offer. It is the intent that a limited number of such Upgrade packages will be offered by the Owner, and that once the scope and cost for the upgrades being considered is established, the Owner and Construction Manager will incorporate by Amendment to this Contract the terms and conditions pursuant to which the Construction Manager shall perform such work. It is intended that the Construction Manager will establish a lump sum price per unit type for each Upgrade Package to be offered, and that said lump sum price shall include the fee and administrative costs described above, as well as define the date for each unit by which the Owner must direct the Construction Manager to proceed with the Upgrade. Unit updgrades for which direction to proceed is given after the agreed upon date, or which reflect a deviation in scope from the defined Upgrade Packages will be evaluated separately, and a cost and time adjustment proposed, by the Construction Manager.

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. At time of Final Completion, any costs savings shall be returned 100% to the Owner and 0% to the Construction Manager.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.3 CHANGES IN THE WORK

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™–1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™–1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™–1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

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§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

"Article 5.4: Commencement and Completion has been added. See Exhibit A."

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement. To the extent that some of the Construction Manager's supervisory and administrative personnel located at the Construction Manager's main office provide service to the project, a portion of their wages and salaries will be included in the cost of work and will be reimbursed in accordance with Exhibit C.

Classification Name

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed,

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whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds. ~~*(If charges for self-insurance are to be included, specify the basis of reimbursement.)*~~

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™–1997 or other provisions of the Contract Documents.

.6 Data processing costs related to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

.10 All premiums (without markup) and deductibles associated with Builder's Risk insurance provided by the Construction Manager at the Owner's request.

.11 All premiums (without markup) and deductibles associated with providing professional liability insurance for the mechanical and electrical design services for the condominiums and IL units.

§ 6.1.7 OTHER COSTS

.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager except, however, where conditions requiring such action were caused by or are the result of the Construction Manager's negligence.:

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.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™–1997.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA or A201™–1997 other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

.6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

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

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 See Exhibit A for revised Accounting Records requirements.

ARTICLE 7 CONSTRUCTION PHASE

§ 7.1 PROGRESS PAYMENTS

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

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

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§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™–1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee, less retainage of Five percent (5.00%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five percent (5.00%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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7.1.8.1 As an alternative means of achieving the 5% retainage described in 7.1.7 and 7.1.8 above, the Construction Manager and the Subcontractors may allocate a portion of their respective contract amounts to a "Final Completion" line item within each firm's schedule of values. The portions of each contract so allocated shall be equal to the 5% retainage stipulated. Billing against any such "final completion" line item in a schedule of values will be allowed only under the same circumstances as otherwise defined in the contract documents for the reduction or release of retainage.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™–1997 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™–1997. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™–1997.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's

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accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11 1 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

(Paragraph deleted)

None

8.1.2 Insurance provided will be per the construction Manager's standard policy. The Construction Manager will provide the Owner with a statement of the additional premium cost (if any) associated with other insurance coverage as the Owner may want to consider. If the Owner elects to require the Construction Manager to provide other coverage or limits, then the contract will be adjusted accordingly.

§ 8.1.3

(Paragraph deleted)

§ 8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:

$10,000 Deductible Per Occurrence

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(Paragraph deleted)

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager shall (Insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to One hundred percent (100.00%) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner after the contract is executed and three days before the commencement of any Work at the Project site. Further, Construction Manager shall deliver a binding commitment for the issuance of such bonds at least two weeks prior to the estimated date for the closing on Project financing. In the event of any early start as identified in paragraph 4.2.1.1 Owner may require Construction Manager to provide such bonds. Owner shall provide Construction Manager with 10 days notice of such requirement and stipulate in such notice the time for providing same, and the amount of coverage required by owner.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™–1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™–1997, *General Conditions of the Contract for Construction.*

§ 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 9.2.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™–1997, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™–1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for

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Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager.

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™–1997.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™–1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™–1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

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11.1 thru 11.4
See Exhibit A

11.5
It is understood and agreed that the GMP is for the total cost of the work and that cost over-runs from one line item can be offset by cost savings from another line item.

11.6
All personnel listed in Exhibit C as a "Reimbursable as a cost of the work" shall be included in the cost of the work per Article 7.2, subject to the GMP per Article 6.1.2.2.

11.7
The following procedure is agreed to by Owner and or Owner's lender and Title Company in the event of a lien being filed by one of the Contruction Manager's Vendors and/or Vendor's Vendor(s): At the Construction Manager's sole discretion either 1. Construction Managershall make a cash deposit equal to 150% of each lien amount in separate escrow account held by Owner's Title Company on behalf of the; Construction Manager or 2. The Construction Manager may provide a lien transfer bond for the amount of the lien. Upon said deposit being made or lien bond being provided by Construction Manger, Owner and or Owner's Lender, and Title Company shall immediately disburse to Construction Manager any monies owed to Construction Manager under the terms of this contract.

11.8
Owner and Construction Manager agree to the following punch list procedure for each phase of the project:
1. Prior to issuance of temporary of Full Certificate of Occupancy by City, Owner and/or Owner's designated representative(s) shall prepare one original interior and exterior punch list.
2. Within 7 calendar days after completion punch list work by Construction Manager, Owner and/or Owner's representative(s) will re-inspect to confirm original punch list items are complete.
3. New items will not be added to the original punch list at any time except for items which are substantial (i.e. no hot water) and thus were obviously missed during original punch list items.
4. Any item(s) not included in original punch list shall be considered warranty item(s).
5. Warranty items shall not be considered outstanding punch list items and thus shall not be subject to withholding of final payments.

11.9
If a discrepancy occurs within this Agreement and/or between this Agreement and other contract documents, it is understood and agreed that Article 11 of this Agreement, the balance of this Agreement, and Exhibits "A", "B", "C" and "D"(in that order) shall govern.

11.10
If interest costs occur per Paragraph 4.2, the cost shall be reimbursed by issuance of an Owner Change Order.

11.11
Architect shall return all submittals (i.e. shop drawings) to Contractor within 10 working days of date received from Contractor.

11.12
Modification and/or extension of project completion date due to "weather days" shall be as outlined in Exhibit "D" attached hereto.

11.13
The following Exhibits, attached hereto, form part of the Contract Documents:
Exhibit A: Modifications to the A121CM
Exhibit B: Supplementary Conditions
Exhibit C: Personnel Billing Rates and Matrix

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Exhibit D: Definition of Weather Days.
Exhibit E: Project Scope and Budget Summary
Exhibit F: Preliminary Divisional Cost Breakdown
Exhibit G: Pre-Construction Phase Schedule
Exhibit H: Preliminary Construction Phase Schedule

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

OWNER	CONSTRUCTION MANAGER
(Signature)	(Signature)
DON SILVER, PRES	PETER WATTINGTON, VICE PRESIDENT
(Printed name and title)	(Printed name and title)
April 30, 2004	APRIL 28 2004
Date	Date
ATTEST	ATTEST

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(2576459301)

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit A
Additional Provisions/Modifications based on the AIA A121CMC (2003 Edition)

5.4 COMMENCEMENT AND COMPLETION

Add the following paragraphs:

5.4.1 The date of commencement is the date from which the Contract Time of subparagraph 5.4.2 is measured; it shall be the date of the giving of the Notice to Proceed (the "Commencement Date"). The Owner shall issue the Notice to Proceed within ten calendar days of the last to occur of all of the following (the "Conditions to Commencement"): (i) closing of financing acceptable to Owner, sufficient in an amount to satisfy the Owner's financial obligations hereunder, and (ii) receipt of all permits and approvals necessary to allow commencement and continuation of construction. In no event shall the Construction Manager commence any work on site by placing materials at the site or by conducting other work at the site until a Notice to proceed has been given.

The immediately aforementioned notwithstanding, Construction Manager and Owner acknowledge that prior to receiving a Notice to Proceed the Construction Manager may be required to enter into certain other subcontracts, issue purchase orders, or make similar commitments which, if the Project were not to proceed would result in the incurrence, by Construction Manager of certain costs, financial penalties, or other like or similar expenses. Owner agrees to reimburse Construction Manager all such costs, penalties, or similar expenses, so long as, and only to the extent that Construction Manager has received Owner's written approval prior to the incurrence of such costs, and/or the entering into such subcontracts, authorization of such purchase orders or making such similar commitments. Any activity conducted hereunder shall in no way effect the dates established for substantial completion for each phase as shall be provided for in Amendment No. 1 hereto.

5.4.2 It is anticipated that the Work is to be completed in phases so as to permit residents of the Project to move in on a phased basis (each of which shall be referred to as a "Phase").

.1 Substantial Completion of each Phase is to occur on or before an agreed date. The agreed dates for each Phase shall established by Amendment No. 1 to this Agreement at the time the GMP is established, which shall be an agreed upon number of calendar days from the Commencement Date. Once established each of these days shall be measured from the Commencement Date and may only be extended in accordance with the Contract Documents.

.2 Each date by which Substantial Completion of a Phase must occur pursuant to the Contract Documents shall be referred to as a "Phase Completion Deadline". The period of time from the Commencement Date to the applicable Phase Completion Deadline shall be referred to as the "Phase Contract Time".

.3 The Owner and the Construction Manager acknowledge that if the Construction Manager fails to achieve substantial completion of a Phase before the applicable Phase Completion Deadline, the Owner will suffer damages which are difficult to ascertain. However, the Owner and the Construction Manager agree that the degree to which the Owner will be damaged by the Construction Manager's failure to substantially complete a particular Phase of the Project within the Phase Contract Time generally will decrease as the overall Project nears Substantial Completion. Accordingly, the Construction Manager agrees to pay the Owner as liquidated damages with respect to each particular Phase, and not as a penalty, for each calendar day that passes after the Phase Completion Deadline has expired for the particular Phase of the Project, until the date that the Construction Manager achieves Substantial Completion of that particular Phase, an amount equal to the portion of the GMP allocable to that particular Phase times the construction financing daily interest for Project (the "Stipulated Damage

Amount"). Any liquidated damages payable by the Construction Manager as to a particular Phase shall then be determined by multiplying the Stipulated Damage amount by each day of delay. The Stipulated Damage Amounts for each phase shall be established by an amendment hereto at the closing for financing on the Project.

.4 For purposes of determining that portion of the GMP allocable to a particular Phase, the following method of calculating same will be utilized:

(i) Reasonably determine that amount of the total GMP which generally applies to construction of the Project (as a whole) by adding the sum of the following amounts contained within the GMP: (Specific amounts to be determined when GMP is established by Amendment to the Contract.)

Site Development	$_____
General Conditions	$_____
Construction Manager's Fee	$_____
Other	$_____
Total	$_____

(ii) Subtract total in (i) above from the total GMP to determine the "remaining GMP".

(iii) Utilize the approved Schedule of Values and construction costing information to calculate the percentage of the cost of a particular Phase to the "remaining GMP" amount as determined in (ii) above.

(iv) Apply the percentage from (iii) above for the particular Phase(s) to the GMP.

.5 The Stipulated Damage amount for each Phase is intended to be cumulative of the other Phases. Accordingly, if the Phase Completion Deadline for more than one (1) Phase shall have elapsed without the applicable Phases having been substantially completed, then the Stipulated Damage Amount for each Phase not so substantially complete shall be due and owing by the Construction Manager to the Owner. The Owner may collect the Stipulated Damage Amounts by withholding them from payments due the Construction Manager or by separate demand. The Stipulated Damage Amounts provided herein shall be in lieu of all other claims, costs, losses, damages and/or expenses that the Owner might otherwise have against the Construction Manager by reason of its failure to achieve Substantial Completion before the relevant Phase completion Deadline, whether arising from contract or tort, or actual, direct, indirect or consequential damages, and the Owner hereby releases the Construction Manager therefrom.

.6

.1 The Construction Manager agrees that final completion of each Phase of the Work shall occur as soon as possible after Substantial Completion of the Phase, but no later than thirty (30) calendar days after the date on which Substantial Completion of that Phase has occurred, as evidenced by the Architect's Certificate of Substantial Completion. Final payment as to a Phase shall be due upon final completion of such Phase.

.2 Owner acknowledges that there may be certain items which may be on order that, through no fault of the Construction Manager, may not arrive and/or otherwise be available for incorporation into the Work within said thirty (30) day period. To the extent that Owner, in Owners sole discretion, accepts a Phase as having achieved final completion, even though such items remain outstanding, Owner may, (a) acknowledge such acceptance, and (b) withhold up to one and one half (1.5) times the total cost (as determined by the Construction Manager) for each Phase, or $5000 for each Phase (whichever is greater), of such Work which remains incomplete or unincorporated.

.3 Further, it is the intent that outstanding items described in 5.4.2.6.2 are to be secured and installed as quickly as possible – preferably within five (5) days after the Construction Manager receives those items. It is acknowledged that some items may be more significant than others in terms of the operation or marketability of the project. It is also acknowledged that unless determined otherwise, the costs incurred by the Construction Manager for procuring, expediting and installing the items covered by 5.4.2.6.2 are reimbursable costs as defined under Article 6 of the Contract. Accordingly, it may be less costly for the Owner, and less disruptive to the operation of the facility, to have several items accumulated and installed at one time rather than have each item installed as it is delivered. Therefore, for each item outstanding as of Substantial Completion, within five (5) days the Construction Manager shall provide the Owner, in writing, with a proposed plan indicating the expected delivery date and proposed installation date for each item. The Owner and Construction Manager will jointly review (and revise as needed) said plan and reach an agreement on the plan. The Construction Manager will report to the Owner on a weekly basis of the status of the items remaining to be installed, and immediately notify the Owner of any change in delivery date or installation date due to unforeseen procurement or delivery problems. If, after receiving an outstanding item the Construction Manager fails to commence the Work within five (5) days after agreed upon commencement date, or subsequently fails to complete the Work in accordance with the agreed upon schedule,the Owner may exercise its right to carry out the work as provided in section 2.4 of the A201 General Conditions

.4 The provision stated above for withholding 1.5 times the cost of items outstanding at the time of Substantial Completion does not apply to any Upgrade Options initiated by the Owner subsequent to the decision date established by the Construction Manager for each upgrade option proposed for a given residential unit.

.7 Except for the portions of the project which the Owner has requested completion and occupancy prior to the completion of the Commons Areas in the El Centro building, it is the intent that when developing the Phase Completion Deadlines described in 5.4.2.1 and 5.4.2.2 above, for the purposes of determining what, if any, stipulated damage amount may be owed by Construction Manager, no phase shall be deemed to have achieved Substantial Completion until such time as (1) the common areas (as defined in Amendment No. 1) portion of the Project shall have achieved Substantial Completion or (2) the Owner agrees to deem the phase Substantially Complete or (3) the Owner takes beneficial occupancy of all or part of the phase. Further and accordingly, when establishing the completion dates for each phase as provided for herein by amendment hereto, such amendment shall also provide that no phase shall be deemed complete for the purposes hereof unless (1) and/or until the commons area portion of the Project shall have attained substantial completion, (2) the Owner has agreed to deem the phase Substantially Complete, or (3) the Owner takes beneficial occupancy of all or part of the phase.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be satisfactory to the Owner and Owner's lender. The Owner and the Owner's accountants and the lender and lender's accountant or consultants shall be afforded reasonable access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement and the Project, (collectively "the records") and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. All Records shall be maintained in accordance with generally accepted accounting principles, consistently applied. There shall be an "open book" policy, in effect at all times with regard to all Records relative to the project

maintained by either the Construction Manager or the Owner, or anyone on their behalf, and each party shall have full and complete access to said Records maintained by the other at all reasonable times. The Construction Manager shall require all Subcontractors and Sub-Subcontractors retained on a cost-plus basis to retain Records and permit the same access by Owner as is required of the Construction Manager under this Article 6.4.

6.4.1.1 If the Owner, Owner's accountants, Lender or Lender's accountants elect to perform an audit of "the records" maintained by Construction Manager, said audit shall be performed within six (6) months of the Final Completion of the project. This stipulation does not affect the Construction Manager's obligation to maintain "the records" for the time period noted in 6.4.1.

6.4.2 If, at any time during construction, any inspection by the Owner or the Lender of the Construction Manager's Records or any other data relating to the contract documents reveals an overcharge or undercharge by the Construction Manager as confirmed by an independent auditor, the next Application for Payment shall be appropriately adjusted by the amount of such overcharge or ~~undercharge and related Fee.~~

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

Add the following:

7.1.11 To the extent of payments received by the Construction Manager from the Owner, the Construction Manager warrants the real property on which the Project is located will remain free of any legitimate and proper claims of lien arising from the Work performed by or through the Construction Manager. If any such liens are properly recorded, the Construction Manager shall have fifteen (15) business days from its receipt of written notice by the Owner or Owner's agent (including Title company) of such recording within which to discharge or secure by cash deposit or by construction lien transfer bond any such claims of lien. If the Construction Manager fails to discharge or otherwise secure such claim of lien within said time period, the Owner shall be entitled to satisfy the lien or take whatever action it deems appropriate to remove the lien from its property. All reasonable expenses and costs, including reasonable attorney's fees, incurred by the Owner after the abovementioned fifteen (15) day period to effect the discharge, securing and/or removal of any such claims of lien shall be promptly reimbursed to the Owner by the Construction Manager.

7.1.12 Concurrently with each Application for Payment, Construction Manager will deliver to Owner lien waivers (which may be conditioned upon payment) waiving all lien rights in respect of the Project, executed by Construction Manager, and executed by Subcontractors and suppliers covering amounts paid on their account or to be paid with funds received from such Application for Payment. All lien waivers shall be in form and substance satisfactory to Owner and the Owners Lender(s). Additionally, the Construction Manager shall provide further evidence regarding application of each progress payment to payment of all Subcontractors and suppliers providing services or material in respect of the Project, and shall comply with such other reasonable requirements as the Owners Lender(s) may impose with respect to obtaining advances of funds be applied to each Application for Payment."

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION

Add the following the following subparagraphs to 9.1.1:

.1 Claims between the parties to this Agreement shall be resolved as set forth below. At all times, the parties shall approach the dispute resolution process in good faith.

.2 In the event of a Claim between the parties, the parties shall promptly meet in good faith to resolve the Claim informally before invoking the dispute resolution procedures outlined elsewhere in the Contract Documents, including the A201 General Conditions and Supplementary Conditions, and below. If the parties are not able to quickly resolve the claim, either party may request participation by the Architect. Both parties shall promptly submit a written summary of its position to the Architect. Upon receipt of both summaries, the Architect shall immediately convene a formal meeting with the parties to further discuss the Claim. If the Claim is not resolved within three business days after the commencement of such meeting, either party may then commence the dispute resolution process defined in the Contract Documents.

.3 If the informal dispute resolution efforts outlined in 9.1.1.2 are not successful, then the dispute resolution procedures outlined in the balance of the Contract Documents. Any mediation conducted pursuant to this Paragraph 9.1 shall be heldin Santa Fe, unless the parties mutually agree otherwise.

.4 Intentionally omitted
.5 Intentionally omitted

.6 Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

.7 Intentionally omitted
.8 The arbitration shall be held in Santa Fe.

.9 Notwithstanding anything herein to the contrary, if (1) the Claims involve a proposed, net aggregate payment or reimbursement in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose, an "interested person or entity" means any person or entity if (a) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (b) the interested person or entity is so situated that the disposition of the claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as other wise permitted by the Contract Documents or by law.

ARTICLE 11
OTHER CONDITIONS AND SERVICES

11.1 The Construction Manager recognizes that any Lender involved in financing the Project will have requirements pertaining to this Agreement. The Construction Manager agrees to cooperate with and assist the Owner and the Architect in amending and supplementing the Contract Documents to conform to reasonable and customary requirements of any Lender (to the extent such requirements are acceptable to the Owner). However, the Construction Manager shall not be responsible for actually preparing amendments or supplements to the Contract Documents for any reason at any time. Such amendments or supplements may include, without limitation, provisions:

A. Naming any Lender as an additional insured on the Construction Manager's bonds and insurance policies and providing notice to any Lender of termination, cancellation or material modification of such policies.

B. Requiring approval of Applications for Payment by a consultant designated by a Lender prior to payment.

C. Agreeing not to amend Contract Documents without the reasonable and timely consent of the Lender.

D. Requiring approval of Change Orders by the Lender, provide that Lender approval will be provided on a timely basis and the Owner will use its best efforts to secure such timely approval.

E. Requiring notice of the Owner's default to the Lender, with a Lender having the right to cure, and requiring continued performance by the Construction Manager, provided that the Lender assumes all contract obligations of the Owner.

F. Subordinating any lien rights of the Construction Manager to rights of the Lender.

G. Requiring copies of all written notices to be sent to the Lender.

H. Granting the Lender the right to inspect the work and to examine records pertaining thereto.

I. Recognizing the pledge of the Owner's rights under Contract Documents to the Lender.

J. Requiring the Construction Manager to acknowledge, on the Lender's request, whether or not the Owner is in default of its obligations under the Contract.

K. Requiring the Construction Manager to assist the Owner in preparing and submitting reports and information concerning the Work as may be reasonably required by the Lender.

11.2 Nothing contained in Paragraph 11.2 or Paragraph 11.3 is intended to derogate from any other rights to terminate this Contract that may be granted the Construction Manager elsewhere in this Contract, including, but not limited to, the provisions of Article 2 and Article 14 of the General Conditions and Article 10 of this Agreement.

11.3 The Construction Manager may perform all or any part of the Work with its own forces, or through an Affiliate, provided that (1) the Construction Manager secures at least two competitive bids with respect to the work Construction Manager intends to perform (2) the Owner consents thereto in writing, which consent shall not be unreasonably withheld, after full disclosure by the Construction Manager to the Owner of the affiliation or relationship of the Affiliate to the Construction Manager and (3) any Work performed by an Affiliate shall be covered in a separate agreement between the Construction Manager

and the Affiliate, which shall satisfy all of the requirements for subcontracts as set forth in Paragraph 5.3 of the General Conditions and which shall be approved by the Owner in writing.

11.4 Any amounts payable hereunder which are not paid when due shall thereafter accrue interest at Wall Street Journal "prime" plus one percent (1%) per annum or at the highest rate allowed under the law of the state where the Project is located, whichever is less.

RainbowVision Santa Fe/Wels Contract Agreement
Exhibit B
Supplementary Conditions to the AIA A201 General Conditions (1997 Edition)

1. The following Supplementary Conditions shall apply to that certain Standard Form of Agreement Between Owner and Construction Manager (the "Agreement") dated

2. For purposes of these Supplementary Conditions, capitalized terms shall have the meaning given to them in the Contract Documents (as such term is defined in Article 1 of the Agreement), unless otherwise defined in these Supplementary Conditions.

3. ~~The following paragraphs supplement, modify, or amend that certain Contract Document entitled~~ "General Conditions of the Contract for Construction," AIA Document A201, Fifteenth Edition, 1997, Articles 1 through 14 inclusive (the "General Conditions"). Where only a portion of any provision of the General Conditions is supplemented, modified, or amended, the remaining portions of that provision shall remain unaltered and in effect. In the event of any inconsistency between the General Conditions and these Supplementary Conditions, the terms of these Supplementary Conditions shall apply. Hereinafter, all references to the General Conditions shall mean the General Conditions as amended by these Supplementary Conditions.

A. INTENTIONALLY OMITTED

B. PARAGRAPH 1.2.4 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.4 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with quality of the surrounding Work and of the construction of the Project generally.

C. PARAGRAPH 1.2.5 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.5 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

D. INTENTIONALLY OMITTED

E. SUBPARAGRAPH 1.5.1, add at the end of the first sentence: ", unless otherwise identified and incorporated by reference in Agreement."

F. SUBPARAGRAPH 2.2.5 Modify Subparagraph 2.2.5 as follows:

"In addition to the sets the Construction Manager used for bidding, the Owner will furnish a to be agreed upon number of sets of black and white prints of the Drawings and copies of the Project Manual free of charge for execution of the Work. Additional sets may be purchased from the Office of the Architect."

G. SUBPARAGRAPH 3.2.3, delete the second sentence, and add at the end: "If the Construction Manager performs Work knowing it involves such error, inconsistency, omission or difference without such notice to the Architect, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributed to correction."

H PARAGRAPH 3.3 "SUPERVISION AND CONSTRUCTION PROCEDURES" is hereby supplemented by the addition of the following sub-paragraphs:

3.3.4. The Construction Manager shall carefully check its own work and that of Subcontractors as the Work is being performed. The Construction Manager shall ensure that incorrect or faulty Work is corrected as soon as possible but in any event in a timely manner so as not to impact the project schedule.

3.3.5 During the finishing stages of the project, the Construction Manager shall make frequent inspections of the Work in the presence of the Architect or the Owners Representative and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work. The Construction Manager shall ensure that incorrect or faulty Work is corrected in accordance with 3.3.4.

I. PARAGRAPH 3.4 "LABOR AND MATERIALS" is hereby supplemented by addition of the following Subparagraphs 3.4.3 and 3.4.4:

3.4.4 Should the Owner make reasonable objection, based upon qualifications, fitness, behavior or temperament, to the presence of any personnel of Construction Manager or any subcontractor, such person shall not perform services on the Project site, or otherwise in connection with the Project, without written consent of the Owner.

3.4.5 The Construction Manager shall not change or replace the assigned Project Manager or Superintendent without prior written consent by the Owner.

J. SUBPARAGRAPH 3.5.1, Add to the end: "Construction Manager's warranties shall commence upon Substantial Completion of the Work for each Phase and continue for a period of one year thereafter."

K. PARAGRAPH 3.5 "WARRANTY" is hereby supplemented by the addition of the following sub-paragraphs:

3.5.2. In the event of a claim by the Owner against the Construction Manager under Paragraph 3.5.1. of these General Conditions (or under any other express written warranty made by the Construction Manager) for any item of Work performed under the Contract Documents, the Owner shall give notice (a "Warranty Notice") of the claim to the Architect and the Construction Manager and thereafter, the Architect or Architects authorized representative and the Construction Manager shall inspect the item(s) of Work in question. If following its inspection the Architect determines that any such item is included within the Construction Manager's warranty under the Contract Documents, then:

(a) Upon formal notification from the Architect, the Construction Manager shall have thirty (30) days, notwithstanding any other time period specified in the Contract Documents, to either (1) complete the cure for the item or, for a Longer Cure Item, commence the cure and thereafter diligently proceed to complete the cure, or (2) if the Construction Manager disputes the warranty coverage of the item, commence the

dispute resolution procedures described in Section 4.3 of the General Conditions.

(b) if upon the expiration of the thirty (30) day period the Construction Manager has failed to satisfy the provisions of either clause (a) (1) or clause (a) (2) immediately above, then the Owner shall have the right to engage a third party Construction Manager of the Owner's sole selection to cure or complete the cure of the warranty item at the Construction Manager's expense.

(c) If the Construction Manager fails to cure an item within the required time and if the item is finally determined by arbitration or, when permitted, judicial proceedings to be covered by any Construction Manager's warranty under the Contract Documents, then the Construction Manager shall be liable for all expenses incurred by the Owner in enforcing its warranty claim including legal and Architectural fees and expenses, an administrative charge of a percentage equal to Construction Manager's fee times the cost to cure the warranty item to cover the Owner's administrative costs to enforce the warranty claim, and, when a third party Construction Manager has been engaged by the Owner under this Paragraph 3.5.2, the costs and expenses of the third party Construction Manager.

L. INTENTIONALLY OMITTED

M. ARTICLE 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES is supplemented by the following replacement language for Subparagraph 3.12.4

3.12.4 Shop Drawings, Product Data, Samples and similar submittals which are required by the Contract Documents to be submitted for Architect's review shall become Contract Documents upon Architect's review and approval. Submittals which are not required by the Contract Documents to be submitted for Architect's review are not Contract Documents.

N. ARTICLE 3.16 "ACCESS TO WORK" is hereby supplemented by addition of the following Subparagraph:

"3.16.2 Representatives of the State Agencies shall have access at all reasonable times to the Work wherever it is in preparation or progress, and the Construction Manager shall provide proper facilities for such access and inspection."

O. PARAGRAPH 4.2.4 "COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION" is hereby supplemented by the additions of the following subparagraphs: Nothing contained herein shall prohibit the Owner's Representative from communicating directly with the Construction Manager for the purpose of receiving information and/or providing the Construction Manager with clarification as to Owner's position with regard to any matters affecting or concerning the Work.

4.2.4.1 The following definitions shall apply to construction communications:

4.2.4.1.1 Contract Document Clarifications: An answer from the Architect, in response to an inquiry from the Construction Manager, intended to make some

requirement(s) of the Drawings or plans clearly understood. Drawing/plan clarifications may be sketches, drawings, or in a narrative form and are not intended to change any requirements of the Contract Documents. Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.2 Non-Conformance Notice: A Notice issued by the Architect documenting that the Work or some portion thereof has not been performed in accordance with the requirements of the Contract Documents. Payment shall not be made on any portion of the Work for which a Non-Conformance Notice has been issued and the Work not corrected to the satisfaction of the Architect.

Upon receipt of a Non-Conformance Notice the Construction Manager shall provide a written Response to the Non-Conformance Notice within five (5) working days after receipt of the Notice. The Construction Manager's response shall state either (a) the basis of Construction Manager's determination that the Work was performed in accordance with the Contract Documents or (b) the corrective action Construction Manager intends to take, at its sole expense, to correct the non-conforming work

If the Construction Manager disputes issuance of the Notice the Architect has five (5) working days in which to respond by either (a) withdrawing the Notice of Non-Conformance or (b) directing the Construction Manager to correct the Work.

If directed to correct the Work, the Construction Manager shall do so within five (5) working days after receipt of such direction from the Architect, or such other time as may be agreed to with the Architect, without loss of rights for claim recovery or dispute resolution as may be available by the Contract.

4.2.4.1.3 Requests for Information: A written request from the Construction Manager or one of its subcontractors, to the Architect, seeking an interpretation or a clarification of some requirement of the Contract Documents. The Construction Manager shall clearly and concisely set forth the issue for which it seeks clarification or interpretation and why a response is needed from the Architect.

Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.4 Substitution/Or-Equal Submittals: A written request from the Construction Manager to substitute a material, article, device, product, fixture, form, type of construction, or process called for in the Contract Documents with another item that shall substantially equal in all respects to that so indicated or supplied. Each such request shall specifically set forth any manner in which the proposed change does not conform to the Contract Documents and Construction Manager (and any subcontractor initiating the request) warrants that the proposed substitute conforms in all respects with the contract documents except as specifically identified as non-conforming in the request.

4.2.4.1.5 Submittals/Shop Drawings: When required by any technical specification included in these Contract Documents, the Construction Manager shall transmit to the Architect technical submittals, shop drawings, or samples, including supporting catalog cuts, manufacturer's literature, sketches or drawings, calculations, and other pertinent, in sufficient detail to enable the Architect to review the information and determine that the Construction Manager clearly understands the requirements of the Contract Documents. Construction Manager (and any subcontractor initiating a submittal) warrants that all Work and materials depicted in technical submittals, shop drawings and samples shall conform in all respects to the requirements of the Contract Documents, except as otherwise specifically identified as non-conforming.

4.2.4.1.6 Schedule Submittals: When required by the Construction Schedule Specification of these Contract Documents, the Construction Manager shall submit required schedules, schedule updates, schedule revisions, time impact analysis, etc. for review.

P. INTENTIONALLY OMITTED

Q. SUBPARAGRAPH 4.3.7.2 is hereby revised (and paragraphs 4.3.73 and 4.3.7.4 are added) to read as follows:

4.3.7.2 Weather days: Construction Manager confirms that the Contract Time, Phased Contract Time and the agreed upon dates for same as set forth in Amendment No. 1 to this Agreement are reasonable periods to perform The Work. Construction Manager has included in the work schedule ordinary and normally anticipated lost days due to adverse weather ("weather days") and therefore Construction Manager shall not be entitled to an extension of the Contract Time or Phased Contract Time as a result of weather conditions normally experienced in the greater Santa Fe area unless (1) the Construction Manager is unable to make up for the weather delay by scheduling work for a Saturday in accordance with in 4.3.7.2 below, and (2) the number of weather days lost (and not made up by Saturday work) in that calendar month exceeds the number of weather days provided for in the Contract Time.

4.3.7.3 The Construction Manager's work schedule is based upon a regular five-day work week per calendar week. It is mutually agreed that in the event of a weather day the Construction Manager, before requesting a time extension the Construction Manager will first try to make up that weather day on the next Saturday available during the following 30 calender days. A Saturday will be considered to be "available" only if all of the following conditions are met: (1) no work has already been scheduled for that day that would interfere with the work being rescheduled, (2) it is not a national holiday, (3) working on that Saturday is allowed by local ordinance, and (4) materials and workforce equivalent to what was scheduled for the lost weekday are available on that Saturday. The Construction Manager will only be required to utilize a Saturday if either (a) the Construction Manager incurs no additional cost in rescheduling work for that Saturday, or (b) the Owner agrees to compensate the Construction Manager (by Change Order) for any additional costs (such as for labor rate differential) the Construction Manager may incur.

4.3.7.4 The requirement stated above for the Construction Manager to utilize a Saturday to make up for a weather delay only applies the number of weather days included in each calendar month as indicated in the following list of Anticipated Lost Days. For every weather day beyond the number included below, the Construction Manager shall be entitled to an equivalent number of days extension to the Contract Time. The Construction Manager may (at the CM's sole discretion) attempt to mitigate the delay utilizing additional Saturdays as outlined in 4.3.7.3, but has not obligation to do so.

For the purposes of this Paragraph the table provided below setting forth the norms/anticipated lost weather days shall be utilized by the parties in determining lost weather days:

Month	Anticipated Lost Days Due to Adverse Weather
January	1
February	1
March	0
April	1
May	0
June	0
July	1
August	1
September	2
October	2
November	1
December	0

See the Exhibit D "Weather Delays" - attached to the Contract.

R. INTENTIONALLY OMITTED

S. SUBPARAGRAPH 4.6.8, add as new subparagraph :

"4.6.8 Limitations of Arbitration. Notwithstanding anything in the Contract Documents to the contrary, if (1) the Claims involve a proposed, net aggregate payment to owner or Construction Manager in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose an "interested person or entity" means any person or entity if (3) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (4) the interested person or entity is so situated that the disposition of the Claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as otherwise permitted by the Contract Documents or by law."

T. SUBPARAGRAPH 5.2.1, change "promptly" to "within 10 days" in lines 5 and 7.

U. PARAGRAPH 7.3 "CONSTRUCTION CHANGE DIRECTIVES"

Subparagraph 7.3.3.3 is hereby changed to read as follows:

7.3.3.3 The following fees apply to Changes to the Work;

7.3.3.3.1 INTENTIONALLY OMITTED

7.3.3.3.2 The same markup applied by the subcontractor in the subcontractors base subcontract, which shall be defined in said subcontract and subject to Owner's approval, to the cost of work performed by any subcontractor.

V. INTENTIONALLY OMITTED

W. INTENTIONALLY OMITTED

X. PARAGRAPH 9.8.1. of the General Conditions is hereby deleted in its entirety and the following is substituted in lieu thereof:

9.8.1 "Substantial Completion" of the Project shall be deemed to occur when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and, in addition, all requirements of the Contract Documents for Substantial Completion, including the following conditions, have been fulfilled as follows:

a. A Temporary of Final Certificate of Occupancy has been issued and all construction related approvals, licenses and requirements have been obtained or satisfied for the Project such that the Project may be operated for its intended use.

b. INTENTIONALLY OMITTED

Y. PARAGRAPH 9.8.2. of the General Conditions is hereby deleted in its entirety and the following Paragraphs 9.8.2.1. through 9.8.2.6. are substituted in lieu thereof:

9.8.2.1. When the Construction Manager considers that the Work, or portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Following receipt of the Construction Manager's list, the Architect will make an inspection (the "Initial Punch List Inspection") to determine whether the Work or designated portion thereof is Substantially Complete. Upon completion of its Initial Punch List Inspection, the Architect shall prepare and submit to the Construction Manager and the Owner the Architect's list (the "Punch List") of items to be completed or corrected. For the items on the Punch List, the Architect shall specify:

a. a date (a "Punch Item Date") by which such items shall be completed, which Punch Item Date shall be no more than forty-five (45) days from the date of the Punch List unless the Architect determines that reasonable cause exists for a later completion date; and

b. the cost to complete or correct the items as reasonably determined by the Architect.

The Architect shall expressly state on the Punch List what the Construction Manager must do to achieve Substantial Completion under Paragraph 9.8.1 of the General. If as a result of the Initial Punch List Inspection the Architect determines that Substantial Completion has occurred, the Architect shall prepare a Certificate of Substantial Completion pursuant to Paragraph 9.8.2.5 below.

9.8.2.2 If the Construction Manager has not given notice that the Work is substantially complete and requested inspection thereof on or before the date for Substantial Completion set by the parties in the Contract Documents, then the Owner may request the Architect to make an Initial Punch List Inspection of the Work to (x) prepare the Punch List pursuant to the provisions of Paragraph 9.8.2.1. above and (y) determine if Substantial Completion has occurred.

9.8.2.3. Upon the request of the Construction Manager prior to the expiration of the relevant Punch Item Date(s) and for good cause shown, the Architect may extend any Punch Item Date(s) for a reasonable period. Following receipt of the Punch List and the Construction Manager's compliance with the requirements of Paragraph 9.8.1. above, the Construction Manager may submit a request for another inspection by the Architect, if necessary, to determine whether Substantial Completion of the Work has been achieved.

9.8.2.4. If the Construction Manager fails to satisfactorily complete any item(s) on the Punch List by the applicable Punch Item Date(s), then the Owner has the right to take over the work in accordance with Section 2.4 of the General Conditions.

9.8.2.5.When the requirements of Paragraph 9.8.1. above have been met and upon the request of either the Owner or the Construction Manager, the Architect shall prepare a Certificate of Substantial Completion, in the form set out in Paragraph 9.8.3 below, which shall establish the date of Substantial Completion and shall establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise specifically stated in the Contract Documents or in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Construction Manager for their written acceptance of responsibilities assigned to them in such certificate.

Z. INTENTIONALLY OMITTED

AA. In addition to the provisions of Paragraph 9.10 Final Completion shall not have been deemed to have occurred until the date upon which all of the following have occurred:

a. INTENTIONALLY OMITTED

b. Delivery of conditional or unconditional lien waivers from each person who performed work at or provide or fabricated materials in connection with the Work (including all subcontracts executed in connection therewith), other than from those persons whose claims are being contested by Construction Manager in good faith and for which Construction Manager has provided to Owner a bond or security in an amount reasonably acceptable to Owner, and

c. Issuance and obtaining of a final, unconditional certificate of occupancy and all construction-related approvals, licenses, and requirements for the Project enabling it to be occupied and operated for its intended use.

BB. SUBPARAGRAPH 9.10.4.1, after "Claims" add: "previously made in writing and identified by Owner as unsettled at the time of final payment."

CC. Paragraph 10.1.1 add the following: "Construction Manager shall prepare and submit to Owner for Owner's approval a comprehensive safety program. Further, Construction Manager shall provide written verification and certification in a form satisfactory to the

Owner, that all subcontractors have familiarized themselves with the safety program and agreed to abide by said program and training regimen thereunder.

DD. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." In the first line of Subparagraph 11.1.1, following the work " companies," insert the following:

", acceptable to the Owner,."

EE. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." Add the following to subparagraph 11.1.3:

"Certificates called for herein shall be furnished in duplicate and shall specifically set forth evidence of all coverage required by 11.1.2 and the Construction Manager shall furnish to the Architect copies of all endorsements that are subsequently issued amending coverage or limits."

FF. SUBPARAGRAPH 13.4.3, add as a new subparagraph:

"In the event of any litigation between the parties, the prevailing party shall be entitled to reimbursements for all reasonable attorneys' fees, expert fees, court costs, and all other third-party costs of the litigation incurred by the prevailing party to the extent allowed by law."

GG. PARAGRAPH 13.5 "TESTS AND INSPECTIONS" is hereby supplemented by the addition of the following subparagraph:

"13.5.7 When work has been installed contrary to any Contract requirements and the Construction Manager requests the privilege of testing in lieu of removal, such testing shall be at the Construction Manager's expense."

HH. INTENTIONALLY OMITTED

II. Add the following new Article:

ARTICLE 15: REQUESTS FOR INFORMATION

15.1.1 In the event that the Construction Manager or its subcontractor, at any tier, determines that some portion of the Drawings, Specifications, or other Contract Documents requires clarification or interpretation by the Architect, the Construction Manager shall submit a Request for Information in writing to the Architect. Requests for Information may only be submitted by the Construction Manager and shall be only submitted on the Request for Information Forms provided by the Architect. The Construction Manager shall clearly and concisely set forth the issue for which clarification and interpretation is sought and why a response is needed from the Architect. If the Request for Information is being used to request confirmation of an interpretation or understanding of a requirement, the Construction Manager shall set forth that interpretation or understanding of the requirement along with reasons why such an understanding was reached.

15.1.2 The Architect will review all Requests for Information to determine whether they are Requests for Information within the meaning of this term. If the Architect determines

that the document is not a Request for Information, it will be returned to the Construction Manager, unreviewed as to content, for resubmittal on the proper form and in the proper manner. In either case, the Architect must reply to RFI in writing within the time requested by the Construction Manager, or three (3) working days, whichever is earlier.

15.1.3 Responses from the Architect are not intended to change any requirement of the Contract Documents. In the event the Construction Manager believes that a response to a Request for Information will cause a change to the requirements of the Contract Document, the Construction Manager shall immediately give written notice to the Architect in accordance with Section 4 of the General Conditions stating that the Construction Manager considers the response to be a change in the scope of work or a change to the project schedule..

END OF SUPPLEMENTARY CONDITIONS

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit "C"

Weather Delays

1. A "Work Day" is defined at Monday thru Friday, 7:30 am– 4:400 pm.

2. The occurrence of one or more of the following will constitute a weather delay as indicated:

   a. 0.25" of rain during the workday constitutes one lost workday
   b. 2.0" of snow during the workday constitutes one lost workday
   c. 12" of snow in a 24-hour period constitutes two lost workdays.
   d. Temperature of 5 degrees below zero (Fahrenheit) constitutes one lost workday.
   e. Any drying time required for soil stabilization (as directed by the geotechnical engineer) due to rain or snow will constitute lost work day(s).

3. Weather days will be included in the final schedule approved as part of the GMP proposal to be incorporated into the contract by amendment. The number of weather days included will be in accordance with Section 3.P of Exhibit B. Adjustments to the contract completion dates due to adverse weather will be made in accordance with Section 3.P of Exhibit B.

RainbowVision Santa Fe/Wels Contract Agreement
Exhibit "D"
Personnel Billing Rates

Position	Reimbursable as a Cost of the Work (w/in GMP)	Included In Fee	Notes	Expected to be Full or Part Time	Billing Rate ($/hr)
Field Staff Stationed on Site					
Superintendent	X		1	Full	$70
Project Engineer, QA/QC	X		1	Full	$60
Carpenter	X		2	Full	Varies - local rate
Laborer	X		2	Full	Varies - local rate
Personnel Not Stationed on Site					
Vice President		X			
CFO		X			
Project Manager	X		3	Part	$75
General Superintendent	X		3	Part	$75
Project Coordinator		X			
Safety Director	X		3	Part	$50
Project Accountant		X			
Pre-Construction Personnel					
Senior Estimator/Pre-Con Services M	X		4	Part	$90
Assistant Estimator	X		4	Part	$60

Notes:

1 Field staff on project site.
2 It is expected that all trade work will be subcontracted. Trade labor rates shown only if need for Gen Conditions.
3 Billed only for time spent on site and traveling to project
4 Billed only for time during pre-construction phase, subject to Pre-construction services billing cap (see Exhibit F).

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit E
Project Scope & Budget Summary

- The Scope of the project includes:
  - 40 Single-story Condominium living units
  - 80 Single-level Independent Living units built in a series of two-story buildings
  - 26 Assisted Living apartments (and related support spaces) constructed on the 2nd level of the central services building
  - Central services building (El Centro) containing commercial kitchen, dinning spaces, activity spaces, administrative and marketing offices, retail spaces, and a spa/wellness center.
  - ~~13 acres of site development, with some off-site, public improvements~~
  - Total building area is approximately 183,000 sf.

- Based on a preliminary site plan and building design commissioned by the Owner, the Construction Manager prepared a detailed, preliminary cost report and presented that report to the Owner on February 1, 2004. Based on that scope and cost report, the Owner has established a construction budget of $20,540,000, based on the Preliminary Divisional Cost Breakdown shown in Exhibit F.
- The Owner has contracted with the Architect to complete the design of the project in accordance with the budget stated above. The completion of the design, and related activities is proceeding in accordance with the Preconstruction Phase Schedule prepared and updated regularly by the Construction Manager. See Exhibit G.

- The Construction Manager has also prepared a Preliminary Construction Schedule. See Exhibit H. A final Construction Schedule will be included in the GMP report and made part of the contract by amendment.

- The Owner, Architect and Construction Manager are working together to monitor the completion of the design to ensure meeting the Construction Budget.

- Upon receipt of the Design Development documents, the Construction Manager will, in accordance with contract Section 2.2 prepare a GMP report that will include all of the elements outlined in Section 2.2.4. Prior to submitting the final GMP report, the Construction Manager will review the preliminary cost estimates with the Owner and Architect to determine if any adjustments to scope are required in order to achieve the construction budget stated above. Upon approval by the Owner, the GMP will be incorporated into the contract by amendment, in accordance with Section 2.2.

- *During the completion of the design The Construction Manager will continue to meet* regularly with the Owner and Architect, and will regularly review the Architect's work in progress to monitor the design as a means to ensure conformance to the construction budget.

RainbowVision Santa Fe/Weis Contract Agreement
EXHIBIT F

Preliminary Divisional Cost Breakdown

C.S.I. SYSTEMS BREAKDOWN		Total Costs	%
Division 1 - General Conditions		$1,047,401	5.9%
Division 1 - Building Permit Allowance		$184,620	1.0%
Division 2 - Site Construction		$1,534,319	8.7%
Division 3 - Concrete		$965,149	5.5%
Division 4 - Masonry		$488,508	2.8%
Division 5 - Metals		$439,822	2.5%
Division 6 - Woods & Plastics		$2,609,476	14.8%
Division 7 - Thermal & Moisture Protection		$968,353	5.5%
Division 8 - Doors & Windows		$771,105	4.4%
Division 9 - Finishes		$3,286,198	18.6%
Division 10 - Specialties		$592,969	3.4%
Division 11 - Equipment (See Note 1)		$445,320	2.5%
Division 12 - Furnishings (See Note 2)		$49,196	0.3%
Division 14 - Conveying		$230,919	1.3%
Division 15 - Mechanical		$2,410,820	13.7%
Division 16 - Electrical		$1,636,100	9.3%
Sub-Total		$17,661,276	100%
Escalation - For 2004	0.0%	-	
Sub-Total		$17,661,276	
Est./Const Contingency - El Centro	5.0%	$243,521	
Est./Const Contingency - Balance	3.0%	$383,726	
Sub-Total		$18,288,523	
Builders Risk Insurance	0.8%	$146,308	
Liability Insurance	0.85%	$156,696	
		$18,591,527	
Construction Manager Fee	3.00%	$557,748	
Sub-Total		$19,149,273	
Performance and Payment Bond		$106,393	
NM Gross Receipts Tax		$1,284,062	
Project Totals		**$20,539,728**	

Notes:

1. "Equipment" includes residential appliances, commerical kitchen and laundry equipment.
2. "Furnishings" does not include FF&E - which is being designed and purchased by the Owner under a separate contract.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit G
Preconstruction Phase Schedule

Refer to the "Preconstruction Schedule" dated _____ (filename: RVSF007), attached separately but made a part of this Exhibit by reference.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit H
Preliminary Construction Phase Schedule

Refer to the "Preliminary Construction Schedule" dated _____ (filename: _____), attached separately but made a part of this Exhibit by reference.

Amendment No. 1
(Revised December 15, 2004)
To Contract Agreement Between
RainbowVision Santa Fé, LLC and Weis Builders, Inc

In accordance with article 2.2.9 of the Contract Agreement, the Guaranteed Maximum Price (GMP) and Project Schedule are hereby modified to reflect the following:

- The Guaranteed Maximum Price will be Twenty-One Million Five Hundred Thirty Nine Thousand, Seven Hundred Twenty-Eight Dollars ($21,539,728).

- The Construction Start date will be January 3, 2005. Based on that start date:
- The Substantial Completion date for Buildings 16, 17, 18, 19, and 20 will be October 28, 2005.
- The Substantial Completion date for the balance of the project will be April 26, 2006.

Accordingly, the GMP Divisional Cost Breakdown (Exhibit F) shall be modified as per the attached revision, dated September 30, 2004. The revised GMP is based on the following:

- Weis September 15, 2004 "Confirmation of GMP" letter (with attachments)
- Weis September 30, 2004 "Summary of Approved Enhancements"

The Construction Schedule (Exhibit H) shall be as shown in the attached update, dated December 15, 2004.

For:
RainbowVision Santa Fe, LLC

(Signature)

JOY SILVER, PRESIDENT
(Printed Name and Title)
RAINBOWVISION PROPERTIES, INC
MANAGING MEMBER

(Date)

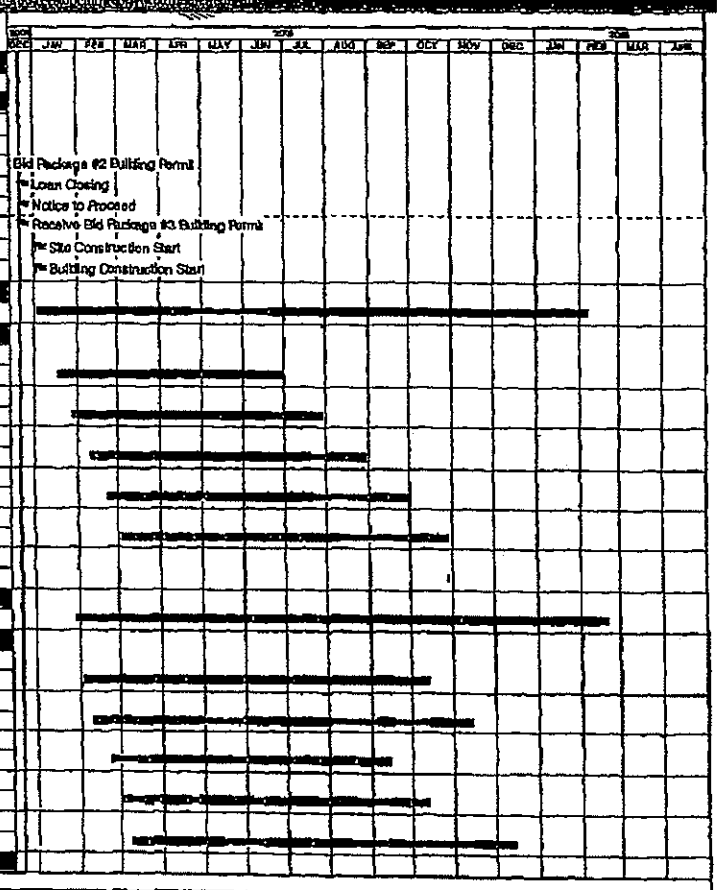
For:
Weis Builders Inc.

(Signature)

PETER WORTHINGTON, VICE PRESIDENT
(Printed Name and Title)

DEC. 15, 2004
(Date)

Act ID	Description	Dur	Early Start	Early Finish
Procurement				
1060	Receive Utilities Permit	0	05AUG04 A	
1120	Receive Grading Permit	0	05AUG04 A	
1080	Receive Bid Package #2 Building Permit	0	02NOV04 A	
1000	Loan Closing	0	22DEC04	
1005	Notice to Proceed	0	22DEC04	
1100	Receive Bid Package #3 Building Permit	0	22DEC04	
1010	Site Construction Start	0	03JAN05	
1020	Building Construction Start	0	03JAN05	
+Sitework				
		285	03JAN05	06FEB06
Condominium Buildings Group 1 - North East				
+Condominium Building 20				
		117	18JAN05	29JUN05
+Condominium Building 18				
		130	28JAN05	29JUL05
+Condominium Building 19				
		144	09FEB05	30AUG05
+Condominium Building 17				
		158	21FEB05	28SEP05
+Condominium Building 16				
		171	03MAR05	28OCT05
+Closeout/Turnover Group 1 Condominiums				
		0	28OCT05	28OCT05
+Ceramic				
		275	28JAN05	20FEB06
Building Group 2 - South East				
+Independent Living Building 1 - 8 Units				
		180	03FEB05	13OCT05
+Independent Living Building 2 - 4 Units				
		186	09FEB05	14NOV05
+Condominium Building 3				
		147	21FEB05	14SEP05
+Condominium Building 4				
		159	03MAR05	12OCT05
+Independent Living Building 5 - 4 Units				
		201	09MAR05	14DEC05
Building Group 3 - South West				



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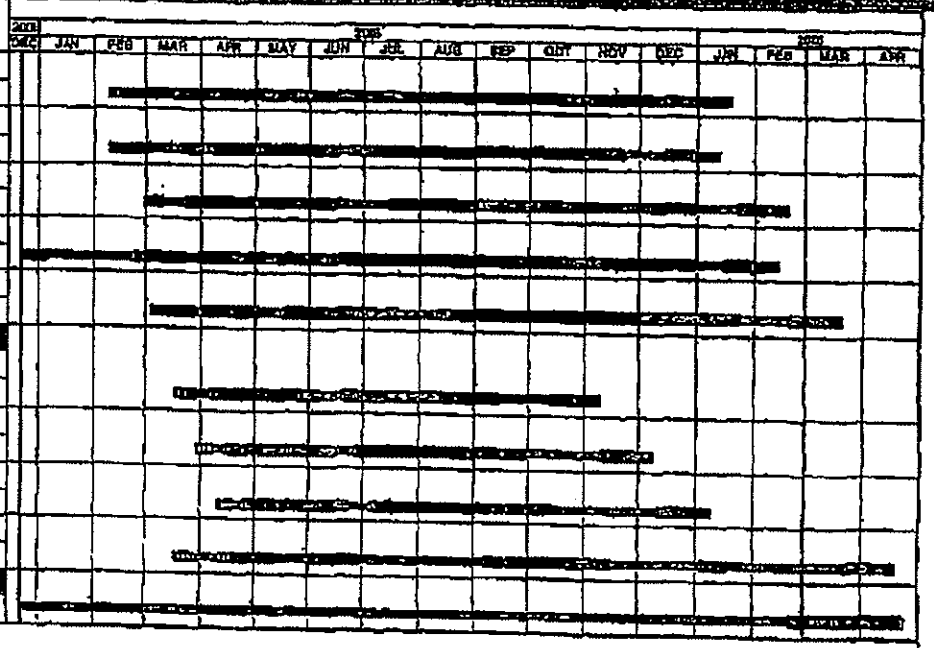
Progress bar
Start milestone point
Finish milestone point

Rainbow Vision Retirement Community
Santa Fe, New Mexico
Wels Builders, Inc.

Act ID	Description	Dur	Early Start	Early Finish
	+Independent Living Building 6 - 14 Units			
		247	09FEB05	20JAN06
	+Independent Living Building 7 - 10 Units			
		242	09FEB05	13JAN06
	+Independent Living Building 8 - 8 Units			
		258	28FEB05	20FEB06
	+Independent Living Building 9 - 14 Units			
		299	22DEC04	14FEB06
	+Independent Living Building 10 - 10 Units			
		272	04MAR05	21MAR06
	Buildings Group 4 - North Wing			
	+Condominium Building 16			
		188	18MAR05	10NOV05
	+Condominium Building 14			
		182	30MAR05	09DEC05
	+Condominium Building 12			
		195	11APR05	09JAN06
	+Independent Living Building 11 - 4 Units			
		283	18MAR05	18APR06
	Closeout			
		348	22DEC04	24APR06



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Rainbow Vision Retirement Community
Sante Fe, New Mexico
Weis Builders, Inc.

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CLAIM OF LIEN

To RainbowVision Santa Fe, LLC owner or reputed owner of the premises hereinafter described, and to all who may be concerned:

The Claimant, Weis Builders Inc. claims a lien in the sum One Million, Five Hundred Twenty-Two Thousand, Three Hundred Nineteen dollars ($1,522,319) plus legal fees, costs and interest, upon the following described property, to-wit:

RainbowVision Santa Fe (excluding Buildings #1, 2, 3, 4, 5, 11, 12, 14, 15, 16, 17, 18, 19, 20) located at 500 Rodeo Road, Santa Fe, New Mexico, more particularly described as:

Township 16 N, Range 9 E, Section 11, L.C.E. for RainbowVision condominiums, per Plat 605/24, and bearing uniform property code number 1-053-095-353-509 (excluding Buildings # 1, 2, 3, 4, 5, 11, 12, 14, 15, 16, 17, 18, 19, 20),

together with all improvements thereon, for labor/services performed and materials furnished by the claimant in the construction, alteration and repair, of a certain multi-building resort retirement community consisting of nineteen (19) one and two story residential buildings and a combination commercial/residential building (El Centro) situated on the property described above.

After deducting all just credits and offsets claimant's demands are: Unpaid amounts invoiced, including retainage ($1,168,362), unpaid contract balance ($15,685), and unpaid change order requests ($338,272).

The name of the owner or reputed owner of said property is RainbowVision Santa Fe, LLC and the name of the person with whom claimant contracted, for whom claimant performed services or to whom claimant furnished the said materials is RainbowVision Santa Fe, LLC.

The terms, time given and condition of claimant's contract are as shown in the contract documents attached hereto and marked Exhibit "I" and made a part of this claim.

Wherefore, claimant claims a lien upon said property and improvements thereon in the amount stated.

Weis Builders Inc.

By Peter Worthington

Peter Worthington, Vice President

EXHIBIT

2

STATE OF MINNESOTA }
} ss
COUNTY OF HENNEPIN }

Verification

Peter Worthington, of lawful age and upon being duly sworn upon his/her oath, states and verifies as follows: that he/she has read the foregoing Claim of Lien and understands the contents thereof; that the matters and things contained therein are true and correct to the best of his/her knowledge, information and belief.

Peter Worthington

SUBSCRIBED AND SWORN TO before me this 30th day of Jan, 2007

Mary F. Klein

My Commission Expires:
1/31/08

Notary Public

MARY F KLEIN
Notary Public
Minnesota
My Commission Expires Jan 31, 2008

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CLAIM OF LIEN
PAGES: 45

COUNTY OF SANTA FE }
STATE OF NEW MEXICO } ss

Hereby Certify That This Instrument Was Filed for Record On The 2ND Day Of February, A D., 2007 at 11.45 And Was Duly Recorded as Instrument # 1469461 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy _____ County Clerk, Santa Fe, NM

COUNTY CLERK
VALERIE ESPINOZA
SANTA FE, NEW MEXICO

AIA® Document A121™CMc – 2003 and AGC Document 565

Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor

AGREEMENT
made as of the Twenty Eighth day of April in the year of Two Thousand and Four
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

RainbowVision Santa Fe LLC
4001 Office Court Road,
Suite 403
Santa Fe, NM 87505

and the Construction Manager:
(Name and address)

Weis Builders, Inc.
7645 Lyndale Avenue South
Minneapolis, MN 55423

The Project is:
(Name, address and brief description)

RainbowVision Santa Fe Retirement Community
500 Rodeo Road at Antigua
Santa Fe, NM 87505

The Architect is:
(Name and address)

Lloyd & Associates Architects
301 N. GuadalupeSuite 104
Santa Fe, NM 87501

The Owner and Construction Manager agree as set forth below:

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

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

The 1997 Edition of AIA® Document A201™, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

SFC CLERK RECORDED 02/02/2007

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™–1997, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™–1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™–1997 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

§ 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

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§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of

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the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

.2 A list of allowances and a statement of their basis.

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

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(1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
(2) the Owner's first authorization to the Construction Manager to:
(a) award a subcontract, or
(b) undertake construction Work with the Construction Manager's own forces, or
(c) issue a purchase order for materials or equipment required for the Work.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™–1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

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ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™–1997, the Architect does not have such authority.

§ 3.3 ARCHITECT

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The Owner shall authorize and cause the Architect to provide Additional Services , requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be

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provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS
The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION
§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

The Construction Manager's fee for Preconstruction Phase Services shall be Seven Thousand Dollars ($7,000), in accordance with Weis's 1/22/03 letter of intent.

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond April 1, 2004 in accordance with Weis's 12/22/03 letter of intent.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 4.2 PAYMENTS
§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable Thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

Interest rate shall be 4% above US Bancorp Prime Rate.
(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

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§ 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

Base Fee will be Three percent (3.0%) of the Cost of the Work as defined in Article 6. For changes in the Work not associated with any " Resident Upgrade Packages" that are to be offered on a unit-by-unit basis, the fee for additive changes will be 3.0% and for deductive changes the fee will be 0.0%.

5.1.2

In addition to the basic fees in 4.1.1 and 5.1.1 above, the Owner shall pay the Construction Manager a Resident Upgrade Fee equal to 15% of the cost of the work, toether with such reasonable administrative costs that the Construction Manager will incur directly related to the performance of such work, associated with the Resident Upgrade Packages that the Owner is planning to offer. It is the intent that a limited number of such Upgrade packages will be offered by the Owner, and that once the scope and cost for the upgrades being considered is established, the Owner and Construction Manager will incorporate by Amendment to this Contract the terms and conditions pursuant to which the Construction Manager shall perform such work. It is intended that the Construction Manager will establish a lump sum price per unit type for each Upgrade Package to be offered, and that said lump sum price shall include the fee and administrative costs described above, as well as define the date for each unit by which the Owner must direct the Construction Manager to proceed with the Upgrade. Unit upgrades for which direction to proceed is given after the agreed upon date, or which reflect a deviation in scope from the defined Upgrade Packages will be evaluated separately, and a cost and time adjustment proposed, by the Construction Manager.

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. At time of Final Completion, any costs savings shall be returned 100% to the Owner and 0% to the Construction Manager.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.3 CHANGES IN THE WORK

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™–1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™–1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™–1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

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§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

"Article 5.4: Commencement and Completion has been added. See Exhibit A."

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement. To the extent that some of the Construction Manager's supervisory and administrative personnel located at the Construction Manager's main office provide service to the project, a portion of their wages and salaries will be included in the cost of work and will be reimbursed in accordance with Exhibit C.

Classification	Name

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed,

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whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds. *(If charges for self-insurance are to be included, specify the basis of reimbursement.)*

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™–1997 or other provisions of the Contract Documents.

.6 Data processing costs related to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

.10 All premiums (without markup) and deductibles associated with Builder's Risk insurance provided by the Construction Manager at the Owner's request.

.11 All premiums (without markup) and deductibles associated with providing professional liability insurance for the mechanical and electrical design services for the condominiums and IL units.

§ 6.1.7 OTHER COSTS

.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1which are incurred by the Construction Manager except, however, where conditions requiring such action were caused by or are the result of the Construction Manager's negligence.:

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.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™–1997.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA or A201™–1997 other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

.6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

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

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 See Exhibit A for revised Accounting Records requirements.

ARTICLE 7 CONSTRUCTION PHASE

§ 7.1 PROGRESS PAYMENTS

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

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

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§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™–1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee, less retainage of Five percent (5.00%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five percent (5.00%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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7.1.8.1 As an alternative means of achieving the 5% retainage described in 7.1.7 and 7.1.8 above, the Construction Manager and the Subcontractors may allocate a portion of their respective contract amounts to a "Final Completion" line item within each firm's schedule of values. The portions of each contract so allocated shall be equal to the 5% retainage stipulated. Billing against any such "final completion" line item in a schedule of values will be allowed only under the same circumstances as otherwise defined in the contract documents for the reduction or release of retainage.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™–1997 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™–1997 . The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™–1997.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's

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accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

(Paragraph deleted)

None

8.1.2 Insurance provided will be per the construction Manager's standard policy. The Construction Manager will provide the Owner with a statement of the additional premium cost (if any) associated with other insurance coverage as the Owner may want to consider. If the Owner elects to require the Construction Manager to provide other coverage or limits, then the contract will be adjusted accordingly.

§ 8.1.3

(Paragraph deleted)

§ 8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:

$10,000 Deductible Per Occurrence

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(Paragraph deleted)

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager shall (Insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to One hundred percent (100.00%) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner after the contract is executed and three days before the commencement of any Work at the Project site. Further, Construction Manager shall deliver a binding commitment for the issuance of such bonds at least two weeks prior to the estimated date for the closing on Project financing. In the event of any early start as identified in paragraph 4.2.1.1 Owner may require Construction Manager to provide such bonds. Owner shall provide Construction Manager with 10 days notice of such requirement and stipulate in such notice the time for providing same, and the amount of coverage required by owner.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™–1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™–1997, *General Conditions of the Contract for Construction.*

§ 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 9.2.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™–1997, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™–1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for

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Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager.

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™–1997.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™–1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™–1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

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11.1 thru 11.4
See Exhibit A

11.5
It is understood and agreed that the GMP is for the total cost of the work and that cost over-runs from one line item can be offset by cost savings from another line item.

11.6
All personnel listed in Exhibit C as a "Reimbursable as a cost of the work" shall be included in the cost of the work per Article 7.2, subject to the GMP per Article 6.1.2.2.

11.7
The following procedure is agreed to by Owner and or Owner's lender and Title Company in the event of a lien being filed by one of the Contruction Manager's Vendors and/or Vendor's Vendor(s): At the Construction Manager's sole discretion either 1. Construction Managershall make a cash deposit equal to 150% of each lien amount in separate escrow account held by Owner's Title Company on behalf of the; Construction Manager or 2. The Construction Manager may provide a lien transfer bond for the amount of the lien. Upon said deposit being made or lien bond being provided by Construction Manger, Owner and or Owner's Lender, and Title Company shall immediately disburse to Construction Manager any monies owed to Construction Manager under the terms of this contract.

11.8
Owner and Construction Manager agree to the following punch list procedure for each phase of the project:
1. Prior to issuance of temporary of Full Certificate of Occupancy by City, Owner and/or Owner's designated representative(s) shall prepare one original interior and exterior punch list.
2. Within 7 calendar days after completion punch list work by Construction Manager, Owner and/or Owner's representative(s) will re-inspect to confirm original punch list items are complete.
3. New items will not be added to the original punch list at any time except for items which are substantial (i.e. no hot water) and thus were obviously missed during original punch list items.
4. Any item(s) not included in original punch list shall be considered warranty item(s).
5. Warranty items shall not be considered outstanding punch list items and thus shall not be subject to withholding of final payments.

11.9
If a discrepancy occurs within this Agreement and/or between this Agreement and other contract documents, it is understood and agreed that Article 11 of this Agreement, the balance of this Agreement, and Exhibits "A", "B", "C" and "D"(in that order) shall govern.

11.10
If interest costs occur per Paragraph 4.2, the cost shall be reimbursed by issuance of an Owner Change Order.

11.11
Architect shall return all submittals (i.e. shop drawings) to Contractor within 10 working days of date received from Contractor.

11.12
Modification and/or extension of project completion date due to "weather days" shall be as outlined in Exhibit "D" attached hereto.

11.13
The following Exhibits, attached hereto, form part of the Contract Documents:
Exhibit A: Modifications to the A121CM
Exhibit B: Supplementary Conditions
Exhibit C: Personnel Billing Rates and Matrix

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Exhibit D: Definition of Weather Days.
Exhibit E: Project Scope and Budget Summary
Exhibit F: Preliminary Divisional Cost Breakdown
Exhibit G: Pre-Construction Phase Schedule
Exhibit H: Preliminary Construction Phase Schedule

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

OWNER	CONSTRUCTION MANAGER
(Signature)	(Signature)
JOE SILVER PRESIDENT	PETER WASHINGTON, VICE PRESIDENT
(Printed name and title)	(Printed name and title)
MAY 1, 2004	DEC 29 2004
Date	Date
ATTEST	ATTEST

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit A
Additional Provisions/Modifications based on the AIA A121CMC (2003 Edition)

5.4 COMMENCEMENT AND COMPLETION

Add the following paragraphs:

5.4.1 The date of commencement is the date from which the Contract Time of subparagraph 5.4.2 is measured; it shall be the date of the giving of the Notice to Proceed (the "Commencement Date"). The Owner shall issue the Notice to Proceed within ten calendar days of the last to occur of all of the following (the "Conditions to Commencement"): (i) closing of financing acceptable to Owner, sufficient in an amount to satisfy the Owner's financial obligations hereunder, and (ii) receipt of all permits and approvals necessary to allow commencement and continuation of construction. In no event shall the Construction Manager commence any work on site by placing materials at the site or by conducting other Work at the site until a Notice to proceed has been given.

The immediately aforementioned notwithstanding, Construction Manager and Owner acknowledge that prior to receiving a Notice to Proceed the Construction Manager may be required to enter into certain other subcontracts, issue purchase orders, or make similar commitments which, if the Project were not to proceed would result in the incurrence, by Construction Manager of certain costs, financial penalties, or other like or similar expenses. Owner agrees to reimburse Construction Manager all such costs, penalties, or similar expenses, so long as, and only to the extent that Construction Manager has received Owner's written approval prior to the incurrence of such costs, and/or the entering into such subcontracts, authorization of such purchase orders or making such similar commitments. Any activity conducted hereunder shall in no way effect the dates established for substantial completion for each phase as shall be provided for in Amendment No. 1 hereto.

5.4.2 It is anticipated that the Work is to be completed in phases so as to permit residents of the Project to move in on a phased basis (each of which shall be referred to as a "Phase").

.1 Substantial Completion of each Phase is to occur on or before an agreed date. The agreed dates for each Phase shall established by Amendment No. 1 to this Agreement at the time the GMP is established, which shall be an agreed upon number of calendar days from the Commencement Date. Once established each of these days shall be measured from the Commencement Date and may only be extended in accordance with the Contract Documents.

.2 Each date by which Substantial Completion of a Phase must occur pursuant to the Contract Documents shall be referred to as a "Phase Completion Deadline". The period of time from the Commencement Date to the applicable Phase Completion Deadline shall be referred to as the "Phase Contract Time".

.3 The Owner and the Construction Manager acknowledge that if the Construction Manager fails to achieve substantial completion of a Phase before the applicable Phase Completion Deadline, the Owner will suffer damages which are difficult to ascertain. However, the Owner and the Construction Manager agree that the degree to which the Owner will be damaged by the Construction Manager's failure to substantially complete a particular Phase of the Project within the Phase Contract Time generally will decrease as the overall Project nears Substantial Completion. Accordingly, the Construction Manager agrees to pay the Owner as liquidated damages with respect to each particular Phase, and not as a penalty, for each calendar day that passes after the Phase Completion Deadline has expired for the particular Phase of the Project, until the date that the Construction Manager achieves Substantial Completion of that particular Phase, an amount equal to the portion of the GMP allocable to that particular Phase times the construction financing daily interest for Project (the "Stipulated Damage

Amount"). Any liquidated damages payable by the Construction Manager as to a particular Phase shall then be determined by multiplying the Stipulated Damage amount by each day of delay. The Stipulated Damage Amounts for each phase shall be established by an amendment hereto at the closing for financing on the Project.

.4 For purposes of determining that portion of the GMP allocable to a particular Phase, the following method of calculating same will be utilized:

(i) Reasonably determine that amount of the total GMP which generally applies to construction of the Project (as a whole) by adding the sum of the following amounts contained within the GMP: (Specific amounts to be determined when GMP is established by Amendment to the Contract.)

Site Development	$
General Conditions	$
Construction Manager's Fee	$
Other	$
Total	$

(ii) Subtract total in (i) above from the total GMP to determine the "remaining GMP".

(iii) Utilize the approved Schedule of Values and construction costing information to calculate the percentage of the cost of a particular Phase to the "remaining GMP" amount as determined in (ii) above.

(iv) Apply the percentage from (iii) above for the particular Phase(s) to the GMP.

.5 The Stipulated Damage amount for each Phase is intended to be cumulative of the other Phases. Accordingly, if the Phase Completion Deadline for more than one (1) Phase shall have elapsed without the applicable Phases having been substantially completed, then the Stipulated Damage Amount for each Phase not so substantially complete shall be due and owing by the Construction Manager to the Owner. The Owner may collect the Stipulated Damage Amounts by withholding them from payments due the Construction Manager or by separate demand. The Stipulated Damage Amounts provided herein shall be in lieu of all other claims, costs, losses, damages and/or expenses that the Owner might otherwise have against the Construction Manager by reason of its failure to achieve Substantial Completion before the relevant Phase completion Deadline, whether arising from contract or tort, or actual, direct, indirect or consequential damages, and the Owner hereby releases the Construction Manager therefrom.

.6

.1 The Construction Manager agrees that final completion of each Phase of the Work shall occur as soon as possible after Substantial Completion of the Phase, but no later than thirty (30) calendar days after the date on which Substantial Completion of that Phase has occurred, as evidenced by the Architect's Certificate of Substantial Completion. Final payment as to a Phase shall be due upon final completion of such Phase.

.2 Owner acknowledges that there may be certain items which may be on order that, through no fault of the Construction Manager, may not arrive and/or otherwise be available for incorporation into the Work within said thirty (30) day period. To the extent that Owner, in Owners sole discretion, accepts a Phase as having achieved final completion, even though such items remain outstanding, Owner may, (a) acknowledge such acceptance, and (b) withhold up to one and one half (1.5) times the total cost (as determined by the Construction Manager) for each Phase, or $5000 for each Phase (whichever is greater), of such Work which remains incomplete or unincorporated.

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.3 Further, it is the intent that outstanding items described in 5.4.2.6.2 are to be secured and installed as quickly as possible – preferably within five (5) days after the Construction Manager receives those items. It is acknowledged that some items may be more significant than others in terms of the operation or marketability of the project. It is also acknowledged that unless determined otherwise, the costs incurred by the Construction Manager for procuring, expediting and installing the items covered by 5.4.2.6.2 are reimbursable costs as defined under Article 8 of the Contract. Accordingly, it may be less costly for the Owner, and less disruptive to the operation of the facility, to have several items accumulated and installed at one time rather than have each item installed as it is delivered. Therefore, for each item outstanding as of Substantial Completion, within five (5) days the Construction Manager shall provide the Owner, in writing, with a proposed plan indicating the expected delivery date and proposed installation date for each item. The Owner and Construction Manager will jointly review (and revise as needed) said plan and reach an agreement on the plan. The Construction Manager will report to the Owner on a weekly basis of the status of the items remaining to be installed, and immediately notify the Owner of any change in delivery date or installation date due to unforeseen procurement or delivery problems. If after receiving an outstanding item the Construction Manager fails to commence the Work within five (5) days after agreed upon commencement date, or subsequently fails to complete the Work in accordance with the agreed upon schedule, the Owner may exercise its right to carry out the work as provided in section 2.4 of the A201 General Conditions

.4 The provision stated above for withholding 1.5 times the cost of items outstanding at the time of Substantial Completion does not apply to any Upgrade Options initiated by the Owner subsequent to the decision date established by the Construction Manager for each upgrade option proposed for a given residential unit.

.7 Except for the portions of the project which the Owner has requested completion and occupancy prior to the completion of the Commons Areas in the El Centro building, it is the intent that when developing the Phase Completion Deadlines described in 5.4.2.1 and 5.4.2.2 above, for the purposes of determining what, if any, stipulated damage amount may be owed by Construction Manager, no phase shall be deemed to have achieved Substantial Completion until such time as (1) the common areas (as defined in Amendment No. 1) portion of the Project shall have achieved Substantial Completion or (2) the Owner agrees to deem the phase Substantially Complete or (3) the Owner takes beneficial occupancy of all or part of the phase. Further and accordingly, when establishing the completion dates for each phase as provided for herein by amendment hereto, such amendment shall also provide that no phase shall be deemed complete for the purposes hereof unless (1) and/or until the commons area portion of the Project shall have attained substantial completion, (2) the Owner has agreed to deem the phase Substantially Complete, or (3) the Owner takes beneficial occupancy of all or part of the phase.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be satisfactory to the Owner and Owner's lender. The Owner and the Owner's accountants and the lender and lender's accountant or consultants shall be afforded reasonable access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement and the Project, (collectively "the records") and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. All Records shall be maintained in accordance with generally accepted accounting principles, consistently applied. There shall be an "open book" policy, in effect at all times with regard to all Records relative to the project

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maintained by either the Construction Manager or the Owner, or anyone on their behalf, and each party shall have full and complete access to said Records maintained by the other at all reasonable times. The Construction Manager shall require all Subcontractors and Sub-Subcontractors retained on a cost-plus basis to retain Records and permit the same access by Owner as is required of the Construction Manager under this Article 6.4.

6.4.1.1 If the Owner, Owner's accountants, Lender or Lender's accountants elect to perform an audit of "the records" maintained by Construction Manager, said audit shall be performed within six (6) months of the Final Completion of the project. This stipulation does not affect the Construction Manager's obligation to maintain "the records" for the time period noted in 6.4.1.

6.4.2 If, at any time during construction, any inspection by the Owner or the Lender of the Construction Manager's Records or any other data relating to the contract documents reveals an overcharge or undercharge by the Construction Manager as confirmed by an independent auditor, the next Application for Payment shall be appropriately adjusted by the amount of such overcharge or undercharge and related Fee.

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

Add the following:

7.1.11 To the extent of payments received by the Construction Manager from the Owner, the Construction Manager warrants the real property on which the Project is located will remain free of any legitimate and proper claims of lien arising from the Work performed by or through the Construction Manager. If any such liens are properly recorded, the Construction Manager shall have fifteen (15) business days from its receipt of written notice by the Owner or Owner's agent (including Title company) of such recording within which to discharge or secure by cash deposit or by construction lien transfer bond any such claims of lien. If the Construction Manager fails to discharge or otherwise secure such claim of lien within said time period, the Owner shall be entitled to satisfy the lien or take whatever action it deems appropriate to remove the lien from its property. All reasonable expenses and costs, including reasonable attorney's fees, incurred by the Owner after the abovementioned fifteen (15) day period to effect the discharge, securing and/or removal of any such claims of lien shall be promptly reimbursed to the Owner by the Construction Manager.

7.1.12 Concurrently with each Application for Payment, Construction Manager will deliver to Owner lien waivers (which may be conditioned upon payment) waiving all lien rights in respect of the Project, executed by Construction Manager, and executed by Subcontractors and suppliers covering amounts paid on their account or to be paid with funds received from such Application for Payment. All lien waivers shall be in form and substance satisfactory to Owner and the Owners Lender(s). Additionally, the Construction Manager shall provide further evidence regarding application of each progress payment to payment of all Subcontractors and suppliers providing services or material in respect of the Project, and shall comply with such other reasonable requirements as the Owners Lender(s) may impose with respect to obtaining advances of funds be applied to each Application for Payment."

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ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION

Add the following the following subparagraphs to 9.1.1:

.1 Claims between the parties to this Agreement shall be resolved as set forth below. At all times, the parties shall approach the dispute resolution process in good faith.

.2 In the event of a Claim between the parties, the parties shall promptly meet in good faith to resolve the Claim informally before invoking the dispute resolution procedures outlined elsewhere in the Contract Documents, including the A201 General Conditions and Supplementary Conditions, and below. If the parties are not able to quickly resolve the claim, either party may request participation by the Architect. Both parties shall promptly submit a written summary of its position to the Architect. Upon receipt of both summaries, the Architect shall immediately convene a formal meeting with the parties to further discuss the Claim. If the Claim is not resolved within three business days after the commencement of such meeting, either party may then commence the dispute resolution process defined in the Contract Documents.

.3 If the informal dispute resolution efforts outlined in 9.1.1.2 are not successful, then the dispute resolution procedures outlined in the balance of the Contract Documents. Any mediation conducted pursuant to this Paragraph 9.1 shall be heldin Santa Fe, unless the parties mutually agree otherwise.

.4 Intentionally omitted
.5 Intentionally omitted

.6 Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

.7 Intentionally omitted
.8 The arbitration shall be held in Santa Fe.

.9 Notwithstanding anything herein to the contrary, if (1) the Claims involve a proposed, net aggregate payment or reimbursement in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose, an "interested person or entity" means any person or entity if (a) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (b) the interested person or entity is so situated that the disposition of the claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as other wise permitted by the Contract Documents or by law.

ARTICLE 11
OTHER CONDITIONS AND SERVICES

11.1 The Construction Manager recognizes that any Lender involved in financing the Project will have requirements pertaining to this Agreement. The Construction Manager agrees to cooperate with and assist the Owner and the Architect in amending and supplementing the Contract Documents to conform to reasonable and customary requirements of any Lender (to the extent such requirements are acceptable to the Owner). However, the Construction Manager shall not be responsible for actually preparing amendments or supplements to the Contract Documents for any reason at any time. Such amendments or supplements may include, without limitation, provisions:

A. Naming any Lender as an additional insured on the Construction Manager's bonds and insurance policies and providing notice to any Lender of termination, cancellation or material modification of such policies.

B. Requiring approval of Applications for Payment by a consultant designated by a Lender prior to payment.

C. Agreeing not to amend Contract Documents without the reasonable and timely consent of the Lender.

D. Requiring approval of Change Orders by the Lender, provide that Lender approval will be provided on a timely basis and the Owner will use its best efforts to secure such timely approval.

E. Requiring notice of the Owner's default to the Lender, with a Lender having the right to cure, and requiring continued performance by the Construction Manager, provided that the Lender assumes all contract obligations of the Owner.

F. Subordinating any lien rights of the Construction Manager to rights of the Lender.

G. Requiring copies of all written notices to be sent to the Lender.

H. Granting the Lender the right to inspect the work and to examine records pertaining thereto.

I. Recognizing the pledge of the Owner's rights under Contract Documents to the Lender.

J. Requiring the Construction Manager to acknowledge, on the Lender's request, whether or not the Owner is in default of its obligations under the Contract.

K. Requiring the Construction Manager to assist the Owner in preparing and submitting reports and information concerning the Work as may be reasonably required by the Lender.

11.2 Nothing contained in Paragraph 11.2 or Paragraph 11.3 is intended to derogate from any other rights to terminate this Contract that may be granted the Construction Manager elsewhere in this Contract, including, but not limited to, the provisions of Article 2 and Article 14 of the General Conditions and Article 10 of this Agreement.

11.3 The Construction Manager may perform all or any part of the Work with its own forces, or through an Affiliate, provided that (1) the Construction Manager secures at least two competitive bids with respect to the work Construction Manager intends to perform (2) the Owner consents thereto in writing, which consent shall not be unreasonably withheld, after full disclosure by the Construction Manager to the Owner of the affiliation or relationship of the Affiliate to the Construction Manager and (3) any Work performed by an Affiliate shall be covered in a separate agreement between the Construction Manager

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and the Affiliate, which shall satisfy all of the requirements for subcontracts as set forth in Paragraph 5.3 of the General Conditions and which shall be approved by the Owner in writing.

11.4 Any amounts payable hereunder which are not paid when due shall thereafter accrue interest at Wall Street Journal "prime" plus one percent (1%) per annum or at the highest rate allowed under the law of the state where the Project is located, whichever is less.

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit B
Supplementary Conditions to the AIA A201 General Conditions (1997 Edition)

1. The following Supplementary Conditions shall apply to that certain Standard Form of Agreement Between Owner and Construction Manager (the "Agreement") dated

2. For purposes of these Supplementary Conditions, capitalized terms shall have the meaning given to them in the Contract Documents (as such term is defined in Article 1 of the Agreement), unless otherwise defined in these Supplementary Conditions.

3. The following paragraphs supplement, modify, or amend that certain Contract Document entitled "General Conditions of the Contract for Construction," AIA Document A201, Fifteenth Edition, 1997, Articles 1 through 14 inclusive (the "General Conditions"). Where only a portion of any provision of the General Conditions is supplemented, modified, or amended, the remaining portions of that provision shall remain unaltered and in effect. In the event of any inconsistency between the General Conditions and these Supplementary Conditions, the terms of these Supplementary Conditions shall apply. Hereinafter, all references to the General Conditions shall mean the General Conditions as amended by these Supplementary Conditions.

A. INTENTIONALLY OMITTED

B. PARAGRAPH 1.2.4 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.4 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with quality of the surrounding Work and of the construction of the Project generally.

C. PARAGRAPH 1.2.5 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.5 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

D. INTENTIONALLY OMITTED

E. SUBPARAGRAPH 1.5.1, add at the end of the first sentence: ", unless otherwise identified and incorporated by reference in Agreement."

F. SUBPARAGRAPH 2.2.5 Modify Subparagraph 2.2.5 as follows:

"In addition to the sets the Construction Manager used for bidding, the Owner will furnish a to be agreed upon number of sets of black and white prints of the Drawings and copies of the Project Manual free of charge for execution of the Work. Additional sets may be purchased from the Office of the Architect."

G. SUBPARAGRAPH 3.2.3, delete the second sentence, and add at the end: "If the Construction Manager performs Work knowing it involves such error, inconsistency, omission or difference without such notice to the Architect, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributed to correction."

H. PARAGRAPH 3.3 "SUPERVISION AND CONSTRUCTION PROCEDURES" is hereby supplemented by the addition of the following sub-paragraphs:

3.3.4. The Construction Manager shall carefully check its own work and that of Subcontractors as the Work is being performed. The Construction Manager shall ensure that incorrect or faulty Work is corrected as soon as possible but in any event in a timely manner so as not to impact the project schedule.

3.3.5 During the finishing stages of the project, the Construction Manager shall make frequent inspections of the Work in the presence of the Architect or the Owners Representative and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work. The Construction Manager shall ensure that incorrect or faulty Work is corrected in accordance with 3.3.4.

I. PARAGRAPH 3.4 "LABOR AND MATERIALS" is hereby supplemented by addition of the following Subparagraphs 3.4.3 and 3.4.4:

3.4.4 Should the Owner make reasonable objection, based upon qualifications, fitness, behavior or temperament, to the presence of any personnel of Construction Manager or any subcontractor, such person shall not perform services on the Project site, or otherwise in connection with the Project, without written consent of the Owner.

3.4.5 The Construction Manager shall not change or replace the assigned Project Manager or Superintendent without prior written consent by the Owner.

J. SUBPARAGRAPH 3.5.1, Add to the end: "Construction Manager's warranties shall commence upon Substantial Completion of the Work for each Phase and continue for a period of one year thereafter."

K. PARAGRAPH 3.5 "WARRANTY" is hereby supplemented by the addition of the following sub-paragraphs:

3.5.2. In the event of a claim by the Owner against the Construction Manager under Paragraph 3.5.1. of these General Conditions (or under any other express written warranty made by the Construction Manager) for any item of Work performed under the Contract Documents, the Owner shall give notice (a "Warranty Notice") of the claim to the Architect and the Construction Manager and thereafter, the Architect or Architects authorized representative and the Construction Manager shall inspect the item(s) of Work in question. If following its inspection the Architect determines that any such item is included within the Construction Manager's warranty under the Contract Documents, then:

(a) Upon formal notification from the Architect, the Construction Manager shall have thirty (30) days, notwithstanding any other time period specified in the Contract Documents, to either (1) complete the cure for the item or, for a Longer Cure Item, commence the cure and thereafter diligently proceed to complete the cure, or (2) if the Construction Manager disputes the warranty coverage of the item, commence the

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dispute resolution procedures described in Section 4.3 of the General Conditions.

(b) If upon the expiration of the thirty (30) day period the Construction Manager has failed to satisfy the provisions of either clause (a) (1) or clause (a) (2) immediately above, then the Owner shall have the right to engage a third party Construction Manager of the Owner's sole selection to cure or complete the cure of the warranty item at the Construction Manager's expense.

(c) If the Construction Manager fails to cure an item within the required time and if the item is finally determined by arbitration or, when permitted, judicial proceedings to be covered by any Construction Manager's warranty under the Contract Documents, then the Construction Manager shall be liable for all expenses incurred by the Owner in enforcing its warranty claim including legal and Architectural fees and expenses, an administrative charge of a percentage equal to Construction Manager's fee times the cost to cure the warranty item to cover the Owner's administrative costs to enforce the warranty claim, and, when a third party Construction Manager has been engaged by the Owner under this Paragraph 3.5.2, the costs and expenses of the third party Construction Manager.

L. INTENTIONALLY OMITTED

M. ARTICLE 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES is supplemented by the following replacement language for Subparagraph 3.12.4

3.12.4 Shop Drawings, Product Data, Samples and similar submittals which are required by the Contract Documents to be submitted for Architect's review shall become Contract Documents upon Architect's review and approval. Submittals which are not required by the Contract Documents to be submitted for Architect's review are not Contract Documents.

N. ARTICLE 3.18 "ACCESS TO WORK" is hereby supplemented by addition of the following Subparagraph:

"3.18.2 Representatives of the State Agencies shall have access at all reasonable times to the Work wherever it is in preparation or progress, and the Construction Manager shall provide proper facilities for such access and inspection."

O. PARAGRAPH 4.2.4 "COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION" is hereby supplemented by the additions of the following subparagraphs: Nothing contained herein shall prohibit the Owner's Representative from communicating directly with the Construction Manager for the purpose of receiving information and/or providing the Construction Manager with clarification as to Owner's position with regard to any matters affecting or concerning the Work.

4.2.4.1 The following definitions shall apply to construction communications:

4.2.4.1.1 Contract Document Clarifications: An answer from the Architect, in response to an inquiry from the Construction Manager, intended to make some

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requirement(s) of the Drawings or plans clearly understood. Drawing/plan clarifications may be sketches, drawings, or in a narrative form and are not intended to change any requirements of the Contract Documents. Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.2 Non-Conformance Notice: A Notice issued by the Architect documenting that the Work or some portion thereof has not been performed in accordance with the requirements of the Contract Documents. Payment shall not be made on any portion of the Work for which a Non-Conformance Notice has been issued and the Work not corrected to the satisfaction of the Architect.

Upon receipt of a Non-Conformance Notice the Construction Manager shall provide a written Response to the Non-Conformance Notice within five (5) working days after receipt of the Notice. The Construction Manager's response shall state either (a) the basis of Construction Manager's determination that the Work was performed in accordance with the Contract Documents or (b) the corrective action Construction Manager intends to take, at its sole expense, to correct the non-conforming work

If the Construction Manager disputes issuance of the Notice the Architect has five (5) working days in which to respond by either (a) withdrawing the Notice of Non-Conformance or (b) directing the Construction Manager to correct the Work.

If directed to correct the Work, the Construction Manager shall do so within five (5) working days after receipt of such direction from the Architect, or such other time as may be agreed to with the Architect, without loss of rights for claim recovery or dispute resolution as may be available by the Contract.

4.2.4.1.3 Requests for Information: A written request from the Construction Manager or one of its subcontractors, to the Architect, seeking an interpretation or a clarification of some requirement of the Contract Documents. The Construction Manager shall clearly and concisely set forth the issue for which it seeks clarification or interpretation and why a response is needed from the Architect.

Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.4 Substitution/Or-Equal Submittals: A written request from the Construction Manager to substitute a material, article, device, product, fixture, form, type of construction, or process called for in the Contract Documents with another item that shall substantially equal in all respects to that so indicated or supplied. Each such request shall specifically set forth any manner in which the proposed change does not conform to the Contract Documents and Construction Manager (and any subcontractor initiating the request) warrants that the proposed substitute conforms in all respects with the contract documents except as specifically identified as non-conforming in the request.

4.2.4.1.5 Submittals/Shop Drawings: When required by any technical specification included in these Contract Documents, the Construction Manager shall transmit to the Architect technical submittals, shop drawings, or samples, including supporting catalog cuts, manufacturer's literature, sketches or drawings, calculations, and other pertinent, in sufficient detail to enable the Architect to review the information and determine that the Construction Manager clearly understands the requirements of the Contract Documents. Construction Manager (and any subcontractor initiating a submittal) warrants that all Work and materials depicted in technical submittals, shop drawings and samples shall conform in all respects to the requirements of the Contract Documents, except as otherwise specifically identified as non-conforming.

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4.2.4.1.6 Schedule Submittals: When required by the Construction Schedule Specification of these Contract Documents, the Construction Manager shall submit required schedules, schedule updates, schedule revisions, time impact analysis, etc. for review.

P. INTENTIONALLY OMITTED

Q. SUBPARAGRAPH 4.3.7.2 is hereby revised (and paragraphs 4.3.73 and 4.3.7.4 are added) to read as follows:

4.3.7.2 Weather days: Construction Manager confirms that the Contract Time, Phased Contract Time and the agreed upon dates for same as set forth in Amendment No. 1 to this Agreement are reasonable periods to perform The Work. Construction Manager has included in the work schedule ordinary and normally anticipated lost days due to adverse weather ("weather days") and therefore Construction Manager shall not be entitled to an extension of the Contract Time or Phased Contract Time as a result of weather conditions normally experienced in the greater Santa Fe area unless (1) the Construction Manager is unable to make up for the weather delay by scheduling work for a Saturday in accordance with in 4.3.7.2 below, and (2) the number of weather days lost (and not made up by Saturday work) in that calendar month exceeds the number of weather days provided for in the Contract Time.

4.3.7.3 The Construction Manager's work schedule is based upon a regular five-day work week per calendar week. It is mutually agreed that in the event of a weather day the Construction Manager, before requesting a time extension the Construction Manager will first try to make up that weather day on the next Saturday available during the following 30 calendar days. A Saturday will be considered to be "available" only if all of the following conditions are met: (1) no work has already been scheduled for that day that would interfere with the work being rescheduled, (2) it is not a national holiday, (3) working on that Saturday is allowed by local ordinance, and (4) materials and workforce equivalent to what was scheduled for the lost weekday are available on that Saturday. The Construction Manager will only be required to utilize a Saturday if either (a) the Construction Manager incurs no additional cost in rescheduling work for that Saturday, or (b) the Owner agrees to compensate the Construction Manager (by Change Order) for any additional costs (such as for labor rate differential) the Construction Manager may incur.

4.3.7.4 The requirement stated above for the Construction Manager to utilize a Saturday to make up for a weather delay only applies the number of weather days included in each calendar month as indicated in the following list of Anticipated Lost Days. For every weather day beyond the number included below, the Construction Manager shall be entitled to an equivalent number of days extension to the Contract Time. The Construction Manager may (at the CM's sole discretion) attempt to mitigate the delay utilizing additional Saturdays as outlined in 4.3.7.3, but has not obligation to do so.

For the purposes of this Paragraph the table provided below setting forth the norms/anticipated lost weather days shall be utilized by the parties in determining lost weather days:

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Month	Anticipated Lost Days Due to Adverse Weather
January	1
February	1
March	0
April	1
May	0
June	0
July	1
August	1
September	2
October	2
November	1
December	0

See the Exhibit D "Weather Delays" - attached to the Contract.

R. INTENTIONALLY OMITTED

S. SUBPARAGRAPH 4.6.8, add as new subparagraph :

"4.6.8 Limitations of Arbitration. Notwithstanding anything in the Contract Documents to the contrary, if (1) the Claims involve a proposed, net aggregate payment to owner or Construction Manager in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose an "interested person or entity" means any person or entity if (3) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (4) the interested person or entity is so situated that the disposition of the Claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as otherwise permitted by the Contract Documents or by law."

T. SUBPARAGRAPH 5.2.1, change "promptly" to "within 10 days" in lines 5 and 7.

U. PARAGRAPH 7.3 "CONSTRUCTION CHANGE DIRECTIVES"

Subparagraph 7.3.3.3 is hereby changed to read as follows:

7.3.3.3 The following fees apply to Changes to the Work:

7.3.3.3.1 INTENTIONALLY OMITTED

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7.3.3.3.2 The same markup applied by the subcontractor in the subcontractors base subcontract, which shall be defined in said subcontract and subject to Owner's approval, to the cost of work performed by any subcontractor.

V. INTENTIONALLY OMITTED

W. INTENTIONALLY OMITTED

X. PARAGRAPH 9.8.1. of the General Conditions is hereby deleted in its entirety and the following is substituted in lieu thereof:

9.8.1 "Substantial Completion" of the Project shall be deemed to occur when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and, in addition, all requirements of the Contract Documents for Substantial Completion, including the following conditions, have been fulfilled as follows:

a. A Temporary of Final Certificate of Occupancy has been issued and all construction related approvals, licenses and requirements have been obtained or satisfied for the Project such that the Project may be operated for its intended use.

b. INTENTIONALLY OMITTED

Y. PARAGRAPH 9.8.2. of the General Conditions is hereby deleted in its entirety and the following Paragraphs 9.8.2.1. through 9.8.2.6. are substituted in lieu thereof:

9.8.2.1. When the Construction Manager considers that the Work, or portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Following receipt of the Construction Manager's list, the Architect will make an inspection (the "Initial Punch List Inspection") to determine whether the Work or designated portion thereof is Substantially Complete. Upon completion of its Initial Punch List Inspection, the Architect shall prepare and submit to the Construction Manager and the Owner the Architect's list (the "Punch List") of items to be completed or corrected. For the items on the Punch List, the Architect shall specify:

a. a date (a "Punch Item Date") by which such items shall be completed, which Punch Item Date shall be no more than forty-five (45) days from the date of the Punch List unless the Architect determines that reasonable cause exists for a later completion date; and

b. the cost to complete or correct the items as reasonably determined by the Architect.

The Architect shall expressly state on the Punch List what the Construction Manager must do to achieve Substantial Completion under Paragraph 9.8.1 of the General. If as a result of the Initial Punch List Inspection the Architect determines that Substantial Completion has occurred, the Architect shall prepare a Certificate of Substantial Completion pursuant to Paragraph 9.8.2.5 below.

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9.8.2.2 If the Construction Manager has not given notice that the Work is substantially complete and requested inspection thereof on or before the date for Substantial Completion set by the parties in the Contract Documents, then the Owner may request the Architect to make an initial Punch List Inspection of the Work to (x) prepare the Punch List pursuant to the provisions of Paragraph 9.8.2.1. above and (y) determine if Substantial Completion has occurred.

9.8.2.3. Upon the request of the Construction Manager prior to the expiration of the relevant Punch Item Date(s) and for good cause shown, the Architect may extend any Punch Item Date(s) for a reasonable period. Following receipt of the Punch List and the Construction Manager's compliance with the requirements of Paragraph 9.8.1. above, the Construction Manager may submit a request for another inspection by the Architect, if necessary, to determine whether Substantial Completion of the Work has been achieved.

9.8.2.4. If the Construction Manager fails to satisfactorily complete any item(s) on the Punch List by the applicable Punch Item Date(s), then the Owner has the right to take over the work in accordance with Section 2.4 of the General Conditions.

9.8.2.5.When the requirements of Paragraph 9.8.1. above have been met and upon the request of either the Owner or the Construction Manager, the Architect shall prepare a Certificate of Substantial Completion, in the form set out in Paragraph 9.8.3 below, which shall establish the date of Substantial Completion and shall establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise specifically stated in the Contract Documents or in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Construction Manager for their written acceptance of responsibilities assigned to them in such certificate.

Z. INTENTIONALLY OMITTED

AA. In addition to the provisions of Paragraph 9.10 Final Completion shall not have been deemed to have occurred until the date upon which all of the following have occurred:

a. INTENTIONALLY OMITTED

b. Delivery of conditional or unconditional lien waivers from each person who performed work at or provide or fabricated materials in connection with the Work (including all subcontracts executed in connection therewith), other than from those persons whose claims are being contested by Construction Manager in good faith and for which Construction Manager has provided to Owner a bond or security in an amount reasonably acceptable to Owner, and

c. Issuance and obtaining of a final, unconditional certificate of occupancy and all construction-related approvals, licenses, and requirements for the Project enabling it to be occupied and operated for its intended use.

BB. SUBPARAGRAPH 9.10.4.1, after "Claims" add: "previously made in writing and identified by Owner as unsettled at the time of final payment."

CC. Paragraph 10.1.1 add the following: "Construction Manager shall prepare and submit to Owner for Owner's approval a comprehensive safety program. Further, Construction Manager shall provide written verification and certification in a form satisfactory to the

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Owner, that all subcontractors have familiarized themselves with the safety program and agreed to abide by said program and training regimen thereunder.

DD. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." In the first line of Subparagraph 11.1.1, following the work " companies," insert the following:

", acceptable to the Owner,."

EE. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." Add the following to subparagraph 11.1.3:

"Certificates called for herein shall be furnished in duplicate and shall specifically set forth evidence of all coverage required by 11.1.2 and the Construction Manager shall furnish to the Architect copies of all endorsements that are subsequently issued amending coverage or limits."

FF. SUBPARAGRAPH 13.4.3, add as a new subparagraph:

"In the event of any litigation between the parties, the prevailing party shall be entitled to reimbursements for all reasonable attorneys' fees, expert fees, court costs, and all other third-party costs of the litigation incurred by the prevailing party to the extent allowed by law."

GG. PARAGRAPH 13.5 "TESTS AND INSPECTIONS" is hereby supplemented by the addition of the following subparagraph:

"13.5.7 When work has been installed contrary to any Contract requirements and the Construction Manager requests the privilege of testing in lieu of removal, such testing shall be at the Construction Manager's expense."

HH. INTENTIONALLY OMITTED

II. Add the following new Article:

ARTICLE 15: REQUESTS FOR INFORMATION

15.1.1 In the event that the Construction Manager or its subcontractor, at any tier, determines that some portion of the Drawings, Specifications, or other Contract Documents requires clarification or interpretation by the Architect, the Construction Manager shall submit a Request for Information in writing to the Architect. Requests for Information may only be submitted by the Construction Manager and shall be only submitted on the Request for Information Forms provided by the Architect. The Construction Manager shall clearly and concisely set forth the issue for which clarification and interpretation is sought and why a response is needed from the Architect. If the Request for Information is being used to request confirmation of an interpretation or understanding of a requirement, the Construction Manager shall set forth that interpretation or understanding of the requirement along with reasons why such an understanding was reached.

15.1.2 The Architect will review all Requests for Information to determine whether they are Requests for Information within the meaning of this term. If the Architect determines

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that the document is not a Request for Information, it will be returned to the Construction Manager, unreviewed as to content, for resubmittal on the proper form and in the proper manner. In either case, the Architect must reply to RFI in writing within the time requested by the Construction Manager, or three (3) working days, whichever is earlier.

15.1.3 Responses from the Architect are not intended to change any requirement of the Contract Documents. In the event the Construction Manager believes that a response to a Request for Information will cause a change to the requirements of the Contract Document, the Construction Manager shall immediately give written notice to the Architect in accordance with Section 4 of the General Conditions stating that the Construction Manager considers the response to be a change in the scope of work or a change to the project schedule..

END OF SUPPLEMENTARY CONDITIONS

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit "C"

Weather Delays

1. A "Work Day" is defined at Monday thru Friday, 7:30 am– 4:400 pm.

2. The occurrence of one or more of the following will constitute a weather delay as indicated:

   a. 0.25" of rain during the workday constitutes one lost workday
   b. 2.0" of snow during the workday constitutes one lost workday
   c. 12" of snow in a 24-hour period constitutes two lost workdays.
   d. Temperature of 5 degrees below zero (Fahrenheit) constitutes one lost workday.
   e. Any drying time required for soil stabilization (as directed by the geotechnical engineer) due to rain or snow will constitute lost work day(s).

3. Weather days will be included in the final schedule approved as part of the GMP proposal to be incorporated into the contract by amendment. The number of weather days included will be in accordance with Section 3.P of Exhibit B. Adjustments to the contract completion dates due to adverse weather will be made in accordance with Section 3.P of Exhibit B.

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RainbowVision Santa Fe/Wels Contract Agreement
Exhibit "D"
Personnel Billing Rates

Position	Reimbursable as a Cost of the Work (w/in GMP)	Included in Fee	Notes	Expected to be Full or Part Time	Billing Rate ($/hr)
Field Staff Stationed on Site					
Superintendent	X		1	Full	$70
Project Engineer, QA/QC	X		1	Full	$80
Carpenter	X		2	Full	Varies - local rate
Laborer	X		2	Full	Varies - local rate
Personnel Not Stationed on Site					
Vice President		X			
CFO		X			
Project Manager	X		3	Part	$75
General Superintendent	X		3	Part	$75
Project Coordinator		X			
Safety Director	X		3	Part	$50
Project Accountant		X			
Pre-Construction Personnel					
Senior Estimator/Pre-Con Services M	X		4	Part	$90
Assistant Estimator	X		4	Part	$60

Notes:
1 Field staff on project site.
2 It is expected that all trade work will be subcontracted. Trade labor rates shown only if need for Gen Conditions.
3 Billed only for time spent on site and traveling to project
4 Billed only for time during pre-construction phase, subject to Pre-construction services billing cap (see Exhibit F).

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit E
Project Scope & Budget Summary

- The Scope of the project includes:
  - 40 Single-story Condominium living units
  - 80 Single-level Independent Living units built in a series of two-story buildings
  - 26 Assisted Living apartments (and related support spaces) constructed on the 2nd level of the central services building
  - Central services building (El Centro) containing commercial kitchen, dinning spaces, activity spaces, administrative and marketing offices, retail spaces, and a spa/wellness center.
  - 13 acres of site development, with some off-site, public improvements
  - Total building area is approximately 183,000 sf.

- Based on a preliminary site plan and building design commissioned by the Owner, the Construction Manager prepared a detailed, preliminary cost report and presented that report to the Owner on February 1, 2004. Based on that scope and cost report, the Owner has established a construction budget of $20,540,000, based on the Preliminary Divisional Cost Breakdown shown in Exhibit F.
- The Owner has contracted with the Architect to complete the design of the project in accordance with the budget stated above. The completion of the design, and related activities is proceeding in accordance with the Preconstruction Phase Schedule prepared and updated regularly by the Construction Manager. See Exhibit G.

- The Construction Manager has also prepared a Preliminary Construction Schedule. See Exhibit H. A final Construction Schedule will be included in the GMP report and made part of the contract by amendment.

- The Owner, Architect and Construction Manager are working together to monitor the completion of the design to ensure meeting the Construction Budget.

- Upon receipt of the Design Development documents, the Construction Manager will, in accordance with contract Section 2.2 prepare a GMP report that will include all of the elements outlined in Section 2.2.4. Prior to submitting the final GMP report, the Construction Manager will review the preliminary cost estimates with the Owner and Architect to determine if any adjustments to scope are required in order to achieve the construction budget stated above. Upon approval by the Owner, the GMP will be incorporated into the contract by amendment, in accordance with Section 2.2.

- During the completion of the design The Construction Manager will continue to meet regularly with the Owner and Architect, and will regularly review the Architect's work in progress to monitor the design as a means to ensure conformance to the construction budget.

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RainbowVision Santa Fe/Weis Contract Agreement
EXHIBIT F

Preliminary Divisional Cost Breakdown

C.S.I. SYSTEMS BREAKDOWN		Total Costs	%
Division 1 - General Conditions		$1,047,401	5.9%
Division 1 - Building Permit Allowance		$184,620	1.0%
Division 2 - Site Construction		$1,534,319	8.7%
Division 3 - Concrete		$965,149	5.5%
Division 4 - Masonry		$488,508	2.8%
Division 5 - Metals		$439,822	2.5%
Division 6 - Woods & Plastics		$2,609,476	14.8%
Division 7 - Thermal & Moisture Protection		$969,353	5.5%
Division 8 - Doors & Windows		$771,105	4.4%
Division 9 - Finishes		$3,286,198	18.6%
Division 10 - Specialties		$592,969	3.4%
Division 11 - Equipment (See Note 1)		$445,320	2.5%
Division 12 - Furnishings (See Note 2)		$49,196	0.3%
Division 14 - Conveying		$230,919	1.3%
Division 15 - Mechanical		$2,410,820	13.7%
Division 16 - Electrical		$1,636,100	9.3%
Sub-Total		$17,661,276	100%
Escalation - For 2004	0.0%	-	
Sub-Total		$17,661,276	
Est./Const Contingency - El Centro	5.0%	$243,521	
Est./Const Contingency - Balance	3.0%	$383,726	
Sub-Total		$18,288,523	
Builders Risk Insurance	0.8%	$146,308	
Liability Insurance	0.85%	$156,696	
		$18,591,527	
Construction Manager Fee	3.00%	$557,746	
Sub-Total		$19,149,273	
Performance and Payment Bond		$106,393	
NM Gross Receipts Tax		$1,284,062	
Project Totals		**$20,539,728**	

Notes:

1. "Equipment" includes residential appliances, commerical kitchen and laundry equipment.
2. "Furnishings" does not include FF&E - which is being designed and purchased by the Owner under a separate contract.

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RainbowVision Santa Fe/Wels Contract Agreement
Exhibit G
Preconstruction Phase Schedule

Refer to the "Preconstruction Schedule" dated . (filename: RVSF007), attached separately but made a part of this Exhibit by reference.

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit H
Preliminary Construction Phase Schedule

Refer to the "Preliminary Construction Schedule" dated (filename:), attached separately but made a part of this Exhibit by reference.

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Amendment No. 1
(Revised December 15, 2004)
To Contract Agreement Between
RainbowVision Santa Fe, LLC and Weis Builders, Inc

In accordance with article 2.2.9 of the Contract Agreement, the Guaranteed Maximum Price (GMP) and Project Schedule are hereby modified to reflect the following:

- The Guaranteed Maximum Price will be Twenty-One Million Five Hundred Thirty Nine Thousand, Seven Hundred Twenty-Eight Dollars ($21,539,728).
- The Construction Start date will be January 3, 2005. Based on that start date:
- The Substantial Completion date for Buildings 16, 17, 18, 19, and 20 will be October 28, 2005.
- The Substantial Completion date for the balance of the project will be April 26, 2006.

Accordingly, the GMP Divisional Cost Breakdown (Exhibit F) shall be modified as per the attached revision, dated September 30, 2004. The revised GMP is based on the following:

- Weis September 15, 2004 "Confirmation of GMP" letter (with attachments)
- Weis September 30, 2004 "Summary of Approved Enhancements"

The Construction Schedule (Exhibit H) shall be as shown in the attached update, dated December 15, 2004.

For: RainbowVision Santa Fe, LLC	For: Weis Builders Inc.
(Signature)	Peter Whitfield (Signature)
(Printed Name and Title)	PETER WORTHINGTON, VICE PRESIDENT (Printed Name and Title)
(Date)	Dec-15, 2004 (Date)

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EXHIBIT 6

12/24/08

THE STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT OF

First Judicial District Court
Dec 2 2008
Santa Fe, New Mexico

RAINBOW VISION SANTA FE, LLC,

Plaintiff,

0101

No. ~~D-0141-~~CV--2007-00010

V.

WEIS BUILDERS, INC.
PCI CONTRACTORS, INC., and
RLA, INC.,

Defendants.

and

WEIS BUILDERS, INC.,

Third-Party Plaintiff,

V.

RODGERS PLUMBING AND HEATING, INC.,
EKER BROTHERS, INC.,
TLC COMPANY,
EMCO, INC.,
SUPERIOR CONTRACTING CORPORATION, D/B/A AMERICAN NATIONAL INSULATION AND SEALANTS,
BMCW SOUTHCENTRAL, L.P. D/B/A BMC CONSTRUCTION,
BBD CONSTRUCTION, L.P., as successor in interest to or assignee of BMC CONSTRUCTION,
MAVERICK FRAMING, INC., as successor in interest to or assignee of BMC CONSTRUCTION,
PCI CONTRACTORS, INC.;
WESTERN TECHNOLOGIES, INC.,
VALLEY FIRE PROTECTION, INC.,
STORM WATER CONTROL, INC.,
PINON WINDOW & DOOR, INC.,
MICHAEL HUNTER PAINTING, INC.,
MESA ERECTORS, INC.,
LOPEZ ROOFING SERVICE, INC.,
KOCH MECHANICAL,
KLEIN ENTERPRISES, LLC;
HUGHES AND ASSOCIATES, INC.,

GEO-TEST, INC.,
F&J HOMEBUILDERS, INC.,
DAWSON SURVEYS, INC., AND
BOHANNAN-HUSTON, INC.,

Third-Party Defendants.

THIRD AMENDED THIRD-PARTY COMPLAINT

Weis Builders Inc. ("WBI") as Third Party Plaintiff, makes this Third Amended Third Party Complaint.

1. WBI is a Minnesota corporation duly and validly licensed in the State of New Mexico.
2. Rodgers Plumbing and Heating Co., Inc. is a New Mexico corporation with its principal place of business in Albuquerque, New Mexico.
3. Eker Brothers, Inc. is a New Mexico Corporation with its principal address in Santa Fe, New Mexico, and its registered agent in Albuquerque, New Mexico.
4. T L C Company, Inc. is a New Mexico Corporation with its principal place of business in Albuquerque, New Mexico.
5. PCI Contractors, INC. is a New Mexico Corporation with its principal place of business in Albuquerque, New Mexico.
6. Upon information and belief EMCO, Inc. is a New Mexico Corporation with a place of business in Santa Fe, New Mexico and licensed to do business in the State of New Mexico.
7. Upon information and belief, Superior Contracting Corporation, D/B/A American

National Insulation And Sealants is a Delaware Corporation with a place of business in Albuquerque, New Mexico and licensed to do business in the State of New Mexico.

8. Upon information and belief, BMCW Southcentral, L.P. D/B/A BMC Construction is a Texas Company doing business in the State of New Mexico.

9. Upon information and belief, BBD Construction, L.P., is Texas Limited Partnership doing business in the state of New Mexico and is a successor in interest to or assignee of BMC Construction.

10. Upon information and belief, Maverick Framing, Inc., is a Texas corporation registered to do business in the state of New Mexico that is the assignee of the subcontract or a successor in interest to BMC Construction regarding BMC's work on the Project.

11. Upon information and belief, Defendant Bohannan-Huston, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe County as an engineering/land surveying subcontractor, which caused acts and events to occur in this County from which WBI' claims arise.

12. Upon information and belief, Defendant Dawson Surveys, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe County as a land surveying subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise.

13. Upon information and belief, Defendant F&J Homebuilders, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe County as construction subcontractor, which caused acts and events to

occur in this County from which WBI's' claims arise.

14. Upon information and belief, Defendant Geo-Test, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe County as an engineering and consulting subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise.

15. Upon information and belief, Defendant Hughes and Associates, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe County as construction subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise.

16. Upon information and belief, Defendant Klein Enterprises, LLC was, at all time material hereto, a New Mexico limited liability company authorized to do or doing business in Santa Fe County as subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise.

17. Upon information and belief, Defendant Koch Mechanical was, at all time material hereto, an unknown entity doing business in Santa Fe County as subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise.

18. Upon information and belief, Defendant Lopez Roofing Service, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe County as a roofing subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise.

19. Upon information and belief, Defendant Mesa Erectors, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe

County as a subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise.

20. Upon information and belief, Defendant Michael Hunter Painting, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe County as a painting subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise.

21. Upon information and belief, Defendant Pinon Window & Door, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe County as a window vendor, which caused acts and events to occur in this County from which WBI's' claims arise.

22. Upon information and belief, Defendant Storm Water Control, Inc. was, at all time material hereto, a Colorado corporation doing business in Santa Fe County as a roofing subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise.

23. Upon information and belief, Defendant Valley Fire Protection, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe County as a subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise.

24. Upon information and belief, Western Technologies, Inc. was, at all time material hereto, a New Mexico corporation authorized to do or doing business in Santa Fe County as a engineering subcontractor, which caused acts and events to occur in this County from which WBI's' claims arise

25. This Court has subject matter jurisdiction over this action and personal jurisdiction

of WBI. Venue is proper in Santa Fe County pursuant to NMSA 1978 § 38-3-1.

26. On or about April 28, 2004, WBI and RainbowVision Santa Fe, LLC ("RVSF") entered into a contract under which WBI agreed to provide certain construction services, labor, and materials for work specified in the contract (the "Contract") for the RainbowVision Santa Fe Retirement Community (the "Project"), in Santa Fe, New Mexico, in return for compensation for its services. A true and correct copy of the Contract is being served with this pleading as Exhibit 1 pursuant to Rule 1-009(1) NMRA.

27. The Project is located on real property located at 500 Rodeo Road, Santa Fe New Mexico (the "Property") and more particularly described as:

> That certain tract of land within Section 11, Township 16 North, Range 9 East, NMPM per plat 605/24 bearing uniform property code number 1-053-095-353-509

28. RVSF brought a Complaint against WBI, alleging, among other things, that the work on the Project was not completed in a workmanlike manner which resulted in property damage, including separate damage from the subcontractor's scope of work; defective work has not been remedied, Contract warranty obligations have not been honored, and that substantial completion was not achieved within the times specified in the Contract.

29. RVSF and WBI entered into a Stipulated Order of Dismissal of Certain Claims and Parties following entering into a Settlement Agreement ("RVSF-WBI Agreement") resolving the claims of RVSF against WBI set forth in Counts III, IV, V, VI, VII and VIII of the First Amended Complaint filed herein on February 6, 2007

30. Pursuant to the RVSF-WBI Agreement, WBI agreed to perform certain work at the Project and incurred damages, liquidated damages costs, and fees associated with the construction, remediation and general allegations brought by RVSF, as well as agreed that conditions identified in the future that were major or pervasive would be excluded from the agreement.

31. Pursuant to the RVSF-WBI Settlement Agreement and its limitations, WBI has or anticipates performing substantial work to remediate the balconies, foundation insulation, sill-plates and grading/drainage at the project. WBI's has been put on Notice of additional claims relating to the following: fire-stop installation, draft barriers, framing, joist construction/installation, concrete flatwork, penetration sealants, waterproofing, and various structural components.

32. Evidence of deficiencies within the work of individual subcontractors has been alleged by RVSF or identified by WBI investigation; and individual deficiencies have caused or contributed to the conditions necessitating WBI to incur expenses for its remediation.

33. WBI has incurred approximately $700,000.00 in expenses to date and anticipates continued expenditures for completion of the items identified or excluded from the Settlement Agreement.

COUNT I
EXPRESS INDEMNIFICATION
(AGAINST ALL THIRD-PARTY DEFENDANT SUBCONTRACTORS)

34. WBI realleges and incorporates by reference Paragraphs 1 through 33 of its Third Amended Third-Party Complaint.

35. WBI asserts a claim for indemnity against all Third-Party Defendant Subcontractors

(Rodgers Plumbing & Heating CO. INC.; Eker Brothers, INC.; TLC Company, INC.; EMCO, INC.; Superior Contracting Corporation, D/B/A American National Insulation and Sealants; BMCW Southcentral, L.P., D/B/A BMC Construction; BBD Construction, L.P.; as successor in interest to or assignee of BMC Construction; Maverick Framing, INC., as successor in interest to or assignee of BMC Construction; PCI Contractors, INC.; Western Technologies, Inc., Valley Fire Protection, Inc., Storm Water Control, Inc., Pinon Window & Door, Inc., Michael Hunter Painting, Inc., Mesa Erectors, Inc., Lopez Roofing Service, Inc., Koch Mechanical, Klein Enterprises, LLC; Hughes and Associates, Inc., Geo-Test, Inc., F&J Homebuilders, Inc., Dawson Surveys, Inc., Bohannan-Huston, Inc.) (collectively, the "Third-Party Subcontractors" or "Subcontractors").

36. WBI entered into separate subcontracts (collectively, the "Subcontracts") with the Third Party Subcontractors under which the Subcontractors agreed to furnish all labor, material, skill and equipment necessary or required and to perform all work WBI contracted with the Owner, Rainbow Vision Santa Fe, LLC ("RVSF") for completion of the Project.

37. Pursuant to the Subcontracts, the Third-Party Subcontractors agreed, among other things: To save harmless the Contractor, the Owner and all other subcontractors from any and all losses or damage (including without limiting the generality of the foregoing, legal fees and disbursements paid or incurred by the Contractor to enforce the provisions of this paragraph) occasioned by the failure of the Subcontractor to carry out the provisions of this Subcontract. (Subcontracts, 1. G.)

38. Pursuant to the Subcontracts, The Third-Party Subcontractors also agreed, among other things,

"To the fullest extent permitted by law, Subcontractor shall defend and indemnify Contractor and Owner, and all others whom Contractor or Owner or both, are legally obligated to defend and indemnify by the contract documents, including amendments thereto, from any and all suits and claims alleging damages or injuries to persons or property, or liabilities resulting therefrom, arising out of , or in any manner connected with Subcontractor's Work, including all suits and claims for which any or all of the indemnified parties, may be or may be claimed to be liable, and including all suits and claims that arise either during construction or after completion of the project. Subcontractor understands and agrees that this paragraph obligates Subcontractor to defend and indemnify the indemnified parties from all suits and claims that allege negligence or other wrongful conduct on the part of the indemnified parties. Subcontractor's obligation under this paragraph shall exclude, however, liability for such damages or injury when such damages or injury are caused by the sole fault of the indemnified party seeking indemnity pursuant to this paragraph. Subcontractor understands and agrees to undertake this obligation regardless whether the injured party asserting a suit or claim is an employee of Subcontractor. Subcontractor's obligation hereunder shall not be limited by the operation of a workers' or workman's compensation act, and disability act, or any other employee benefit act. Subcontractor understands and agrees that this paragraph obligates Subcontractor to pay any and all legal fees and expenses incurred by the indemnified parties in defending any suit or claim brought against them that arises out of or is in any manner connected with Subcontractor's Work, as well as any legal fees and expenses incurred in connection with enforcing this paragraph. Subcontractor further agrees to obtain maintain and pay for commercial general liability insurance, to the fullest extent available, including completed operations coverages, to secure the provisions of this paragraph. Notwithstanding anything to the contrary stated herein, no indemnified party hereunder shall be indemnified for liability, claims, damages, losses or expenses, including attorney fees, arising out of:
A. The preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or agents or employees of the indemnitee; or the giving of or the failure to give directions or instructions by the indemnitee, or the agents or employees of the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to the property. The parties hereto agree that this paragraph conforms to the requirements of N.M. STAT.ANN. §56-7-1.

39. RVSF brought suit against WBI alleging damages and injuries to property resulting from, arising out and connected with Subcontractor's Work alleging negligence, breach of the subcontractor contracts or constructions documents, or wrongful

conduct by the Subcontractors.

40. WBI actively defended against the claims of RVSF and incurred attorney costs and fees, expert and consultant costs and fees, and general expenses related to its defense as well as the defense of its subcontractors; and WBI tendered its defense and indemnification to the subcontractors, including by this Third-Party Complaint.

41. RVSF and WBI entered into a Settlement Agreement to resolve RVSF's claims related to its allegations of construction deficiencies.

42. As required by the Settlement Agreement, WBI performed and continues to perform work at the Project, thereby incurring repair costs of labor and materials, consultant and expert fees and expenses, and legal costs and fees; currently at approximately $700,000.00 and expected to increase.

43. The Settlement Agreement specifically identifies that if other conditions not identified by the Settlement Agreement are identified and found to be major, or pervasive, further action may be taken by RVSF against WBI.

44. The conditions which WBI agreed to remediate, and new claims which have been identified, were caused by the conduct of the Third-Party Subcontractors insofar as the Third-Party Subcontractors performed defective work that did not meet industry standards, failed to remedy defective work, failed to honor their warranty obligations, negligently performed work, and failed to perform their work within the times specified in the Contract.

45. WBI is entitled to entry of judgment in its favor and against the Third-Party Complaint Indemnity Subcontractors, based upon principles of indemnity, for an amount equal to any liability on RVSF's claims against WBI and damages incurred

by WBI in performing additional corrective work at the Project.

46. WBI is further entitled to entry of judgment in its favor and against the Third-Party Complaint Indemnity Subcontractors for an amount equal to the attorneys' fees and costs incurred to defend against RVSF's claims.

Count II
BREACH OF CONTRACT
(AGAINST ALL THIRD-PARTY DEFENDANT SUBCONTRACTORS)

47. WBI realleges and incorporates by reference Paragraphs 1 through 46 of its Amended Third-Party Complaint.

48. WBI entered into valid and binding Subcontracts with all Third-Party Defendant Subcontractors in which Subcontractors agreed to furnish materials and labor at the Project.

49. WBI performed its obligations under the Subcontracts and demanded similar performance of the Third-Party Subcontractor.

50. Pursuant to their respective Subcontracts, the Third-Party Complaint Subcontractors expressly and/or impliedly agreed to the following:

    a. To furnish all labor, material, skill and equipment necessary or required and to perform all the work required under the Subcontract;

    b. To perform all work in a good and workmanlike manner;

    c. To timely perform all work in accordance with the Project schedule;

    d. To guarantee the Subcontract to the same extent that the Contractor is obligated to guarantee its work under the General Contract;

    e. To save harmless the Contractor and all other subcontractors from any and all losses or damage (including without limiting the generality of the

foregoing, legal fees and disbursements paid or incurred by the Contractor to enforce the provisions of this paragraph) occasioned by the failure of the Subcontractor to carry out any provision of the Subcontract;

f. To accept responsibility for all damage caused by the Subcontractor;

g. To comply with all Federal and State laws, codes, and regulations and all municipal ordinances and regulations;

h. To timely perform all punch list work, and

i. To save WBI's harmless from any loss.

51. According to the Subcontract, section H and addendum H, Subcontractors also individually agreed to defend WBI against claims against its work.

52. Subcontractors have breached their respective contracts by failing to perform their work in compliance with said contractual obligations.

53. Pursuant to their contracts, the Subcontractors breached the terms of their contracts by failing to defend WBI.

54. Pursuant to their contracts, the Subcontractors breached the terms of their contracts by failing to indemnify WBI.

55. Pursuant to equitable and common-law principles, the Subcontractors each have a duty to defend WBI.

56. As a direct and proximate result of the Subcontractors' individual breaches of contract, WBI has incurred damages, including but not limited to, attorneys' fees, litigation costs, expert/consultant fees and costs, labor and material costs, and expenses.

57. The claims and obligations against WBI for damages to the Project are the result

of the acts or omissions of the Subcontractors.

58. WBI is therefore entitled to recover from the Subcontractors their specific share of all losses and damages –directly assigned to the individual subcontractors–incurred by WBI as a result of any settlement, compromise, judgment, or award which has or may occur in this matter; including for its costs to defend against the claims and settlement obligations.

59. The Third-Party Complaint Subcontractors have breached their respective Subcontracts including without limitation, each of the obligations described above and in paragraphs 38 and 50.

60. As a result of the Third-Party Complaint Subcontractors breaches, WBI has incurred damages in an amount to be determined at trial plus interest, costs, expert/consultant costs, disbursements, and attorneys' fees/costs.

61. WBI is entitled to judgment in its favor and against each of the Third-Party Complaint Subcontractors for an amount to be determined as determined to be each subcontractors proportional share of damages, plus interest, costs, disbursements, and attorneys' fees.

Count III
IMPLIED/ COMMON LAW/ EQUITABLE INDEMNIFICATION
(AGAINST ALL THIRD-PARTY DEFENDANT SUBCONTRACTORS)

62. WBI realleges and incorporates by reference Paragraphs 1 through 61 of its Amended Third-Party Complaint.

63. Subcontractors have an implied, common law, equitable duty to indemnify WBI for the work each Subcontractor individually performed which is alleged to be deficient.

64. By reason of the foregoing any sum or cost incurred or paid by WBI, or will be ordered to be paid by WBI, because of a requirement for additional or remedial work, then WBI is entitled to indemnity from the Subcontractors according to each proportional share of its liability for injuries and damages sustained by WBI by virtue of settlement or judgment against WBI regarding the Project, and any cause of action alleged here.

65. This Complaint arises out of a contract, and WBI will be entitled to recover, in addition to its damages, reasonable attorneys' fees and costs.

Count IV
BREACH OF EXPRESS/IMPLIED WARRANTY
(AGAINST ALL THIRD-PARTY DEFENDANT SUBCONTRACTORS)

66. WBI re-alleges paragraphs 1 through 65 of this Complaint as if fully set forth herein.

67. Subcontractors expressly and/or impliedly warranted their materials would be of merchantable quality and reasonably fit for their intended purpose, and that the work and labor performed under the construction subcontracts, would be done in a professional and workmanlike manner and in conformance with New Mexico Construction standards.

68. As evidenced by the remedial work performed at the project, expert analysis and Project conditions, the warranties expressly or impliedly provided by Third-Party Subcontractors have been breached as the workmanship and labor were not performed in a workmanlike manner in accordance with the New Mexico construction standards, and/or the materials were not reasonably fit for their intended purpose and of merchantable quality and free from defects.

69. As a result of the allegation of breach of warranties, WBI has and will continue to

suffer direct and consequential damages in an amount not yet known but in excess of this Court's minimum jurisdictional amount and is entitled to recover the same from Third-Party Subcontractors.

70. This Complaint arises out of a contract, and WBI will be entitled to recover, in addition to its damages, reasonable attorneys' fees and costs.

Count V
NEGLIGENCE
(AGAINST ALL THIRD-PARTY DEFENDANT SUBCONTRACTORS)

71. WBI re-alleges paragraphs 1 through 70 of this Complaint as if fully set forth herein.

72. Each Third-Party Subcontractor owes a duty to WBI to ensure their work would be performed in a workmanlike manner and in accordance with New Mexico construction standards, and materials so provided would be free from material defects and/or fit for their intended purposes. Subcontractors knew or should have known that the breach of these duties–if proven–would cause damages to WBI.

73. The prior and current allegations raised by RVSF allege deficiencies in the balconies, sill-plates, insulation, grading and drainage, joists, flat-work, penetrations, waterproofing, stucco, EFIS, and all other aspects of the construction are evidenced by subsequent evaluations; and identify that the Third-Party Subcontractors breached their individual duties to WBI by negligently failing to ensure the work was performed in a workmanlike manner and in accordance with New Mexico construction standards and materials provided on the project were free from defects and the Project was reasonably fit for their

intended purpose.

74. As a proximate result of the alleged breaches, WBI has suffered, and will continue to suffer, direct and consequential damages in an amount not yet known but in excess of $700,000.00 and in excess of this Court's minimal jurisdictional amount and is therefore entitled to recover the same from Subcontractors for each specific deficiency.

WHEREFORE, Weis Builders, Inc. respectfully requests the Court to enter judgment as follows:

a. for WBI for its attorneys' fees and costs, expert/consultant fees and costs, and expense of litigation;
c. Compensatory and consequential damages in an amount to be proven at trial;
d. Pre-judgment and post-Judgment interest thereon at the statutory rate; and
e. Any such other and further relief the Court deems just and proper.

Respectfully submitted,
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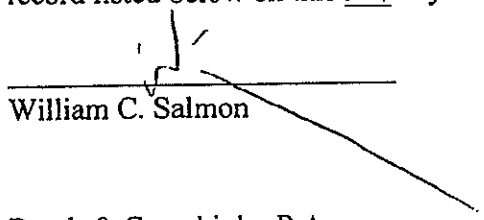
The undersigned certifies that he forwarded a copy of the above Order to counsel of record listed below on this 24 day of December, 2008.



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AIA® Document A121™CMc – 2003 and AGC Document 565

Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor

AGREEMENT
made as of the Twenty Eighth day of April in the year of Two Thousand and Four
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

RainbowVision Santa Fe LLC
4001 Office Court Road,
Suite 403
Santa Fe, NM 87505

and the Construction Manager:
(Name and address)

Weis Builders, Inc.
7645 Lyndale Avenue South
Minneapolis, MN 55423

The Project is:
(Name, address and brief description)

RainbowVision Santa Fe Retirement Community
500 Rodeo Road at Antigua
Santa Fe, NM 87505

The Architect is:
(Name and address)

Lloyd & Associates Architects
301 N. GuadalupeSuite 104
Santa Fe, NM 87501

The Owner and Construction Manager agree as set forth below:

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

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

The 1997 Edition of AIA® Document A201™, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

EXHIBIT
1

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™–1997, *General Conditions of the Contract for Construction, which is incorporated herein by reference.* For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™–1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™–1997 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

§ 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

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§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of

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the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

.2 A list of allowances and a statement of their basis.

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents Issuance dates upon which the date of Substantial Completion is based.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

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(1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or

(2) the Owner's first authorization to the Construction Manager to:
(a) award a subcontract, or
(b) undertake construction Work with the Construction Manager's own forces, or
(c) issue a purchase order for materials or equipment required for the Work.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™–1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

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ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials; ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™–1997, the Architect does not have such authority.

§ 3.3 ARCHITECT

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The Owner shall authorize and cause the Architect to provide Additional Services , requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be

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provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS
The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION
§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

The Construction Manager's fee for Preconstruction Phase Services shall be Seven Thousand Dollars ($7,000), in accordance with Weis's 1/22/03 letter of intent.

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond April 1, 2004 in accordance with Weis's 12/22/03 letter of intent.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 4.2 PAYMENTS
§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable Thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

Interest rate shall be 4% above US Bancorp Prime Rate.
(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

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§ 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

Base Fee will be Three percent (3.0%) of the Cost of the Work as defined in Article 6. For changes in the Work not associated with any " Resident Upgrade Packages" that are to be offered on a unit-by-unit basis, the fee for additive changes will be 3.0% and for deductive changes the fee will be 0.0%.

5.1.2

In addition to the basic fees in 4.1.1 and 5.1.1 above, the Owner shall pay the Construction Manager a Resident Upgrade Fee equal to 15% of the cost of the work, together with such reasonable administrative costs that the Construction Manager will incur directly related to the performance of such work, associated with the Resident Upgrade Packages that the Owner is planning to offer. It is the intent that a limited number of such Upgrade packages will be offered by the Owner, and that once the scope and cost for the upgrades being considered is established, the Owner and Construction Manager will incorporate by Amendment to this Contract the terms and conditions pursuant to which the Construction Manager shall perform such work. It is intended that the Construction Manager will establish a lump sum price per unit type for each Upgrade Package to be offered, and that said lump sum price shall include the fee and administrative costs described above, as well as define the date for each unit by which the Owner must direct the Construction Manager to proceed with the Upgrade. Unit upgrades for which direction to proceed is given after the agreed upon date, or which reflect a deviation in scope from the defined Upgrade Packages will be evaluated separately, and a cost and time adjustment proposed, by the Construction Manager.

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. At time of Final Completion, any costs savings shall be returned 100% to the Owner and 0% to the Construction Manager.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.3 CHANGES IN THE WORK

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™–1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™–1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™–1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

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§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

"Article 5.4: Commencement and Completion has been added. See Exhibit A."

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement. To the extent that some of the Construction Manager's supervisory and administrative personnel located at the Construction Manager's main office provide service to the project, a portion of their wages and salaries will be included in the cost of work and will be reimbursed in accordance with Exhibit C.

Classification Name

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed,

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whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds. ~~(If charges for self-insurance are to be included, specify the basis of reimbursement.)~~

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™–1997 or other provisions of the Contract Documents.

.6 Data processing costs related to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

.10 All premiums (without markup) and deductibles associated with Builder's Risk Insurance provided by the Construction Manager at the Owner's request.

.11 All premiums (without markup) and deductibles associated with providing professional liability insurance for the mechanical and electrical design services for the condominiums and IL units.

§ 6.1.7 OTHER COSTS

.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager except, however, where conditions requiring such action were caused by or are the result of the Construction Manager's negligence.:

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.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™–1997.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA or A201™–1997 other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

.6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

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

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 See Exhibit A for revised Accounting Records requirements.

ARTICLE 7 CONSTRUCTION PHASE

§ 7.1 PROGRESS PAYMENTS

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

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

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§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™–1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee, less retainage of Five percent (5.00%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five percent (5.00%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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7.1.8.1 As an alternative means of achieving the 5% retainage described in 7.1.7 and 7.1.8 above, the Construction Manager and the Subcontractors may allocate a portion of their respective contract amounts to a "Final Completion" line item within each firm's schedule of values. The portions of each contract so allocated shall be equal to the 5% retainage stipulated. Billing against any such "final completion" line item in a schedule of values will be allowed only under the same circumstances as otherwise defined in the contract documents for the reduction or release of retainage.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™–1997 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™–1997. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™–1997.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's

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accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11 1 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

(Paragraph deleted)

None

8.1.2 Insurance provided will be per the construction Manager's standard policy. The Construction Manager will provide the Owner with a statement of the additional premium cost (if any) associated with other insurance coverage as the Owner may want to consider. If the Owner elects to require the Construction Manager to provide other coverage or limits, then the contract will be adjusted accordingly.

§ 8.1.3

(Paragraph deleted)

§ 8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:

$10,000 Deductible Per Occurrence

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(Paragraph deleted)

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager shall (Insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to One hundred percent (100.00%) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner after the contract is executed and three days before the commencement of any Work at the Project site. Further, Construction Manager shall deliver a binding commitment for the issuance of such bonds at least two weeks prior to the estimated date for the closing on Project financing. In the event of any early start as identified in paragraph 4.2.1.1 Owner may require Construction Manager to provide such bonds. Owner shall provide Construction Manager with 10 days notice of such requirement and stipulate in such notice the time for providing same, and the amount of coverage required by owner.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™–1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™–1997, *General Conditions of the Contract for Construction.*

§ 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 9.2.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™–1997, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™–1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for

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Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager.

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™–1997.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™–1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™–1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

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11.1 thru 11.4
See Exhibit A

11.5
It is understood and agreed that the GMP is for the total cost of the work and that cost over-runs from one line item can be offset by cost savings from another line item.

11.6
All personnel listed in Exhibit C as a "Reimbursable as a cost of the work" shall be included in the cost of the work per Article 7.2, subject to the GMP per Article 6.1.2.2.

11.7
The following procedure is agreed to by Owner and or Owner's lender and Title Company in the event of a lien being filed by one of the Contruction Manager's Vendors and/or Vendor's Vendor(s): At the Construction Manager's sole discretion either 1. Construction Managershall make a cash deposit equal to 150% of each lien amount in separate escrow account held by Owner's Title Company on behalf of the; Construction Manager or 2. The Construction Manager may provide a lien transfer bond for the amount of the lien. Upon said deposit being made or lien bond being provided by Construction Manger, Owner and or Owner's Lender, and Title Company shall immediately disburse to Construction Manager any monies owed to Construction Manager under the terms of this contract.

11.8
Owner and Construction Manager agree to the following punch list procedure for each phase of the project:
1. Prior to issuance of temporary of Full Certificate of Occupancy by City, Owner and/or Owner's designated representative(s) shall prepare one original interior and exterior punch list.
2. Within 7 calendar days after completion punch list work by Construction Manager, Owner and/or Owner's representative(s) will re-inspect to confirm original punch list items are complete.
3. New items will not be added to the original punch list at any time except for items which are substantial (i.e. no hot water) and thus were obviously missed during original punch list items.
4. Any item(s) not included in original punch list shall be considered warranty item(s).
5. Warranty items shall not be considered outstanding punch list items and thus shall not be subject to withholding of final payments.

11.9
If a discrepancy occurs within this Agreement and/or between this Agreement and other contract documents, it is understood and agreed that Article 11 of this Agreement, the balance of this Agreement, and Exhibits "A", "B", "C" and "D"(in that order) shall govern.

11.10
If interest costs occur per Paragraph 4.2, the cost shall be reimbursed by issuance of an Owner Change Order.

11.11
Architect shall return all submittals (i.e. shop drawings) to Contractor within 10 working days of date received from Contractor.

11.12
Modification and/or extension of project completion date due to "weather days" shall be as outlined in Exhibit "D" attached hereto.

11.13
The following Exhibits, attached hereto, form part of the Contract Documents:
Exhibit A: Modifications to the A121CM
Exhibit B: Supplementary Conditions
Exhibit C: Personnel Billing Rates and Matrix

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Exhibit D: Definition of Weather Days.
Exhibit E: Project Scope and Budget Summary
Exhibit F: Preliminary Divisional Cost Breakdown
Exhibit G: Pre-Construction Phase Schedule
Exhibit H: Preliminary Construction Phase Schedule

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

OWNER	CONSTRUCTION MANAGER
(Signature)	(Signature)
DON SILVER, PRES	PETER WARRINGTON, VICE PRESIDENT
(Printed name and title)	(Printed name and title)
April 30, 2004	April 28 2004
Date	Date
ATTEST	ATTEST

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RainbowVision Santa Fe/Weis Contract Agreement
Exhibit A
Additional Provisions/Modifications based on the AIA A121CMC (2003 Edition)

5.4 COMMENCEMENT AND COMPLETION

Add the following paragraphs:

5.4.1 The date of commencement is the date from which the Contract Time of subparagraph 5.4.2 is measured; it shall be the date of the giving of the Notice to Proceed (the "Commencement Date"). The Owner shall issue the Notice to Proceed within ten calendar days of the last to occur of all of the following (the "Conditions to Commencement"): (i) closing of financing acceptable to Owner, sufficient in an amount to satisfy the Owner's financial obligations hereunder, and (ii) receipt of all permits and approvals necessary to allow commencement and continuation of construction. In no event shall the Construction Manager commence any work on site by placing materials at the site or by conducting other work at the site until a Notice to proceed has been given.

The immediately aforementioned notwithstanding, Construction Manager and Owner acknowledge that prior to receiving a Notice to Proceed the Construction Manager may be required to enter into certain other subcontracts, issue purchase orders, or make similar commitments which, if the Project were not to proceed would result in the incurrence, by Construction Manager of certain costs, financial penalties, or other like or similar expenses. Owner agrees to reimburse Construction Manager all such costs, penalties, or similar expenses, so long as, and only to the extent that Construction Manager has received Owner's written approval prior to the incurrence of such costs, and/or the entering into such subcontracts, authorization of such purchase orders or making such similar commitments. Any activity conducted hereunder shall in no way effect the dates established for substantial completion for each phase as shall be provided for in Amendment No. 1 hereto.

5.4.2 It is anticipated that the Work is to be completed in phases so as to permit residents of the Project to move in on a phased basis (each of which shall be referred to as a "Phase").

.1 Substantial Completion of each Phase is to occur on or before an agreed date. The agreed dates for each Phase shall established by Amendment No. 1 to this Agreement at the time the GMP is established, which shall be an agreed upon number of calendar days from the Commencement Date. Once established each of these days shall be measured from the Commencement Date and may only be extended in accordance with the Contract Documents.

.2 Each date by which Substantial Completion of a Phase must occur pursuant to the Contract Documents shall be referred to as a "Phase Completion Deadline". The period of time from the Commencement Date to the applicable Phase Completion Deadline shall be referred to as the "Phase Contract Time".

.3 The Owner and the Construction Manager acknowledge that if the Construction Manager fails to achieve substantial completion of a Phase before the applicable Phase Completion Deadline, the Owner will suffer damages which are difficult to ascertain. However, the Owner and the Construction Manager agree that the degree to which the Owner will be damaged by the Construction Manager's failure to substantially complete a particular Phase of the Project within the Phase Contract Time generally will decrease as the overall Project nears Substantial Completion. Accordingly, the Construction Manager agrees to pay the Owner as liquidated damages with respect to each particular Phase, and not as a penalty, for each calendar day that passes after the Phase Completion Deadline has expired for the particular Phase of the Project, until the date that the Construction Manager achieves Substantial Completion of that particular Phase, an amount equal to the portion of the GMP allocable to that particular Phase times the construction financing daily interest for Project (the "Stipulated Damage

Amount"). Any liquidated damages payable by the Construction Manager as to a particular Phase shall then be determined by multiplying the Stipulated Damage amount by each day of delay. The Stipulated Damage Amounts for each phase shall be established by an amendment hereto at the closing for financing on the Project.

.4 For purposes of determining that portion of the GMP allocable to a particular Phase, the following method of calculating same will be utilized:

(i) Reasonably determine that amount of the total GMP which generally applies to construction of the Project (as a whole) by adding the sum of the following amounts contained within the GMP: (Specific amounts to be determined when GMP is established by Amendment to the Contract.)

Site Development	$_____
General Conditions	$_____
Construction Manager's Fee	$_____
Other	$_____
Total	$_____

(ii) Subtract total in (i) above from the total GMP to determine the "remaining GMP".

(iii) Utilize the approved Schedule of Values and construction costing information to calculate the percentage of the cost of a particular Phase to the "remaining GMP" amount as determined in (ii) above.

(iv) Apply the percentage from (iii) above for the particular Phase(s) to the GMP.

.5 The Stipulated Damage amount for each Phase is intended to be cumulative of the other Phases. Accordingly, if the Phase Completion Deadline for more than one (1) Phase shall have elapsed without the applicable Phases having been substantially completed, then the Stipulated Damage Amount for each Phase not so substantially complete shall be due and owing by the Construction Manager to the Owner. The Owner may collect the Stipulated Damage Amounts by withholding them from payments due the Construction Manager or by separate demand. The Stipulated Damage Amounts provided herein shall be in lieu of all other claims, costs, losses, damages and/or expenses that the Owner might otherwise have against the Construction Manager by reason of its failure to achieve Substantial Completion before the relevant Phase completion Deadline, whether arising from contract or tort, or actual, direct, indirect or consequential damages, and the Owner hereby releases the Construction Manager therefrom.

.6

.1 The Construction Manager agrees that final completion of each Phase of the Work shall occur as soon as possible after Substantial Completion of the Phase, but no later than thirty (30) calendar days after the date on which Substantial Completion of that Phase has occurred, as evidenced by the Architect's Certificate of Substantial Completion. Final payment as to a Phase shall be due upon final completion of such Phase.

.2 Owner acknowledges that there may be certain items which may be on order that, through no fault of the Construction Manager, may not arrive and/or otherwise be available for incorporation into the Work within said thirty (30) day period. To the extent that Owner, in Owners sole discretion, accepts a Phase as having achieved final completion, even though such items remain outstanding, Owner may, (a) acknowledge such acceptance, and (b) withhold up to one and one half (1.5) times the total cost (as determined by the Construction Manager) for each Phase, or $5000 for each Phase (whichever is greater), of such Work which remains incomplete or unincorporated.

.3 Further, it is the intent that outstanding items described in 5.4.2.6.2 are to be secured and installed as quickly as possible – preferably within five (5) days after the Construction Manager receives those items. It is acknowledged that some items may be more significant than others in terms of the operation or marketability of the project. It is also acknowledged that unless determined otherwise, the costs incurred by the Construction Manager for procuring, expediting and installing the items covered by 5.4.2.6.2 are reimbursable costs as defined under Article 6 of the Contract. Accordingly, it may be less costly for the Owner, and less disruptive to the operation of the facility, to have several items accumulated and installed at one time rather than have each item installed as it is delivered. Therefore, for each item outstanding as of Substantial Completion, within five (5) days the Construction Manager shall provide the Owner, in writing, with a proposed plan indicating the expected delivery date and proposed installation date for each item. The Owner and Construction Manager will jointly review (and revise as needed) said plan and reach an agreement on the plan. The Construction Manager will report to the Owner on a weekly basis of the status of the items remaining to be installed, and immediately notify the Owner of any change in delivery date or installation date due to unforeseen procurement or delivery problems. If, after receiving an outstanding item the Construction Manager fails to commence the Work within five (5) days after agreed upon commencement date, or subsequently fails to complete the Work in accordance with the agreed upon schedule,the Owner may exercise its right to carry out the work as provided in section 2.4 of the A201 General Conditions

.4 The provision stated above for withholding 1.5 times the cost of items outstanding at the time of Substantial Completion does not apply to any Upgrade Options initiated by the Owner subsequent to the decision date established by the Construction Manager for each upgrade option proposed for a given residential unit.

.7 Except for the portions of the project which the Owner has requested completion and occupancy prior to the completion of the Commons Areas in the El Centro building, it is the intent that when developing the Phase Completion Deadlines described in 5.4.2.1 and 5.4.2.2 above, for the purposes of determining what, if any, stipulated damage amount may be owed by Construction Manager, no phase shall be deemed to have achieved Substantial Completion until such time as (1) the common areas (as defined in Amendment No. 1) portion of the Project shall have achieved Substantial Completion or (2) the Owner agrees to deem the phase Substantially Complete or (3) the Owner takes beneficial occupancy of all or part of the phase. Further and accordingly, when establishing the completion dates for each phase as provided for herein by amendment hereto, such amendment shall also provide that no phase shall be deemed complete for the purposes hereof unless (1) and/or until the commons area portion of the Project shall have attained substantial completion, (2) the Owner has agreed to deem the phase Substantially Complete, or (3) the Owner takes beneficial occupancy of all or part of the phase.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be satisfactory to the Owner and Owner's lender. The Owner and the Owner's accountants and the lender and lender's accountant or consultants shall be afforded reasonable access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement and the Project, (collectively "the records") and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. All Records shall be maintained in accordance with generally accepted accounting principles, consistently applied. There shall be an "open book" policy, in effect at all times with regard to all Records relative to the project

maintained by either the Construction Manager or the Owner, or anyone on their behalf, and each party shall have full and complete access to said Records maintained by the other at all reasonable times. The Construction Manager shall require all Subcontractors and Sub-Subcontractors retained on a cost-plus basis to retain Records and permit the same access by Owner as is required of the Construction Manager under this Article 6.4.

6.4.1.1 If the Owner, Owner's accountants, Lender or Lender's accountants elect to perform an audit of "the records" maintained by Construction Manager, said audit shall be performed within six (6) months of the Final Completion of the project. This stipulation does not affect the Construction Manager's obligation to maintain "the records" for the time period noted in 6.4.1.

6.4.2 If, at any time during construction, any inspection by the Owner or the Lender of the Construction Manager's Records or any other data relating to the contract documents reveals an overcharge or undercharge by the Construction Manager as confirmed by an independent auditor, the next Application for Payment shall be appropriately adjusted by the amount of such overcharge or ~~undercharge and related Fee.~~

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

Add the following:

7.1.11 To the extent of payments received by the Construction Manager from the Owner, the Construction Manager warrants the real property on which the Project is located will remain free of any legitimate and proper claims of lien arising from the Work performed by or through the Construction Manager. If any such liens are properly recorded, the Construction Manager shall have fifteen (15) business days from its receipt of written notice by the Owner or Owner's agent (including Title company) of such recording within which to discharge or secure by cash deposit or by construction lien transfer bond any such claims of lien. If the Construction Manager fails to discharge or otherwise secure such claim of lien within said time period, the Owner shall be entitled to satisfy the lien or take whatever action it deems appropriate to remove the lien from its property. All reasonable expenses and costs, including reasonable attorney's fees, incurred by the Owner after the abovementioned fifteen (15) day period to effect the discharge, securing and/or removal of any such claims of lien shall be promptly reimbursed to the Owner by the Construction Manager.

7.1.12 Concurrently with each Application for Payment, Construction Manager will deliver to Owner lien waivers (which may be conditioned upon payment) waiving all lien rights in respect of the Project, executed by Construction Manager, and executed by Subcontractors and suppliers covering amounts paid on their account or to be paid with funds received from such Application for Payment. All lien waivers shall be in form and substance satisfactory to Owner and the Owners Lender(s). Additionally, the Construction Manager shall provide further evidence regarding application of each progress payment to payment of all Subcontractors and suppliers providing services or material in respect of the Project, and shall comply with such other reasonable requirements as the Owners Lender(s) may impose with respect to obtaining advances of funds be applied to each Application for Payment."

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION

Add the following the following subparagraphs to 9.1.1:

.1 Claims between the parties to this Agreement shall be resolved as set forth below. At all times, the parties shall approach the dispute resolution process in good faith.

.2 In the event of a Claim between the parties, the parties shall promptly meet in good faith to resolve the Claim informally before invoking the dispute resolution procedures ~~outlined elsewhere in the Contract Documents, including the A201 General Conditions and~~ Supplementary Conditions, and below. If the parties are not able to quickly resolve the claim, either party may request participation by the Architect. Both parties shall promptly submit a written summery of its position to the Architect. Upon receipt of both summaries, the Architect shall immediately convene a formal meeting with the parties to further discuss the Claim. If the Claim is not resolved within three business days after the commencement of such meeting, either party may then commence the dispute resolution process defined in the Contract Documents.

.3 If the informal dispute resolution efforts outlined in 9.1.1.2 are not successful, then the dispute resolution procedures outlined in the balance of the Contract Documents. Any mediation conducted pursuant to this Paragraph 9.1 shall be heldin Santa Fe, unless the parties mutually agree otherwise.

.4 Intentionally omitted
.5 Intentionally omitted

.6 Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

.7 Intentionally omitted
.8 The arbitration shall be held in Santa Fe.

.9 Notwithstanding anything herein to the contrary, if (1) the Claims involve a proposed, net aggregate payment or reimbursement in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose, an "interested person or entity" means any person or entity if (a) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (b) the interested person or entity is so situated that the disposition of the claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as other wise permitted by the Contract Documents or by law.

ARTICLE 11
OTHER CONDITIONS AND SERVICES

11.1 The Construction Manager recognizes that any Lender involved in financing the Project will have requirements pertaining to this Agreement. The Construction Manager agrees to cooperate with and assist the Owner and the Architect in amending and supplementing the Contract Documents to conform to reasonable and customary requirements of any Lender (to the extent such requirements are acceptable to the Owner). However, the Construction Manager shall not be responsible for actually preparing amendments or supplements to the Contract Documents for any reason at any time. Such amendments or supplements may include, without limitation, provisions:

A. Naming any Lender as an additional insured on the Construction Manager's bonds and insurance policies and providing notice to any Lender of termination, cancellation or material modification of such policies.

B. Requiring approval of Applications for Payment by a consultant designated by a Lender prior to payment.

C. Agreeing not to amend Contract Documents without the reasonable and timely consent of the Lender.

D. Requiring approval of Change Orders by the Lender, provide that Lender approval will be provided on a timely basis and the Owner will use its best efforts to secure such timely approval.

E. Requiring notice of the Owner's default to the Lender, with a Lender having the right to cure, and requiring continued performance by the Construction Manager, provided that the Lender assumes all contract obligations of the Owner.

F. Subordinating any lien rights of the Construction Manager to rights of the Lender.

G. Requiring copies of all written notices to be sent to the Lender.

H. Granting the Lender the right to inspect the work and to examine records pertaining thereto.

I. Recognizing the pledge of the Owner's rights under Contract Documents to the Lender.

J. Requiring the Construction Manager to acknowledge, on the Lender's request, whether or not the Owner is in default of its obligations under the Contract.

K. Requiring the Construction Manager to assist the Owner in preparing and submitting reports and information concerning the Work as may be reasonably required by the Lender.

11.2 Nothing contained in Paragraph 11.2 or Paragraph 11.3 is intended to derogate from any other rights to terminate this Contract that may be granted the Construction Manager elsewhere in this Contract, including, but not limited to, the provisions of Article 2 and Article 14 of the General Conditions and Article 10 of this Agreement.

11.3 The Construction Manager may perform all or any part of the Work with its own forces, or through an Affiliate, provided that (1) the Construction Manager secures at least two competitive bids with respect to the work Construction Manager intends to perform (2) the Owner consents thereto in writing, which consent shall not be unreasonably withheld, after full disclosure by the Construction Manager to the Owner of the affiliation or relationship of the Affiliate to the Construction Manager and (3) any Work performed by an Affiliate shall be covered in a separate agreement between the Construction Manager

and the Affiliate, which shall satisfy all of the requirements for subcontracts as set forth in Paragraph 5.3 of the General Conditions and which shall be approved by the Owner in writing.

11.4 Any amounts payable hereunder which are not paid when due shall thereafter accrue interest at Wall Street Journal "prime" plus one percent (1%) per annum or at the highest rate allowed under the law of the state where the Project is located, whichever is less.

RainbowVision Santa Fe/Wels Contract Agreement
Exhibit B
Supplementary Conditions to the AIA A201 General Conditions (1997 Edition)

1. The following Supplementary Conditions shall apply to that certain Standard Form of Agreement Between Owner and Construction Manager (the "Agreement") dated

2. For purposes of these Supplementary Conditions, capitalized terms shall have the meaning given to them in the Contract Documents (as such term is defined in Article 1 of the Agreement), unless otherwise defined in these Supplementary Conditions.

3. The following paragraphs supplement, modify, or amend that certain Contract Document entitled "General Conditions of the Contract for Construction," AIA Document A201, Fifteenth Edition, 1997, Articles 1 through 14 inclusive (the "General Conditions"). Where only a portion of any provision of the General Conditions is supplemented, modified, or amended, the remaining portions of that provision shall remain unaltered and in effect. In the event of any inconsistency between the General Conditions and these Supplementary Conditions, the terms of these Supplementary Conditions shall apply. Hereinafter, all references to the General Conditions shall mean the General Conditions as amended by these Supplementary Conditions.

A. INTENTIONALLY OMITTED

B. PARAGRAPH 1.2.4 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.4 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with quality of the surrounding Work and of the construction of the Project generally.

C. PARAGRAPH 1.2.5 "Correlation and Intent of the Contract Documents" is hereby added as follows:

1.2.5 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

D. INTENTIONALLY OMITTED

E. SUBPARAGRAPH 1.5.1, add at the end of the first sentence: ", unless otherwise identified and incorporated by reference in Agreement."

F. SUBPARAGRAPH 2.2.5 Modify Subparagraph 2.2.5 as follows:

"In addition to the sets the Construction Manager used for bidding, the Owner will furnish a to be agreed upon number of sets of black and white prints of the Drawings and copies of the Project Manual free of charge for execution of the Work. Additional sets may be purchased from the Office of the Architect."

G. SUBPARAGRAPH 3.2.3, delete the second sentence, and add at the end: "If the Construction Manager performs Work knowing it involves such error, inconsistency, omission or difference without such notice to the Architect, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributed to correction."

H PARAGRAPH 3.3 "SUPERVISION AND CONSTRUCTION PROCEDURES" is hereby supplemented by the addition of the following sub-paragraphs:

3.3.4. The Construction Manager shall carefully check its own work and that of Subcontractors as the Work is being performed. The Construction Manager shall ensure that incorrect or faulty Work is corrected as soon as possible but in any event in a timely manner so as not to impact the project schedule.

3.3.5 During the finishing stages of the project, the Construction Manager shall make frequent inspections of the Work in the presence of the Architect or the Owners Representative and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work. The Construction Manager shall ensure that incorrect or faulty Work is corrected in accordance with 3.3.4.

I. PARAGRAPH 3.4 "LABOR AND MATERIALS" is hereby supplemented by addition of the following Subparagraphs 3.4.3 and 3.4.4:

3.4.4 Should the Owner make reasonable objection, based upon qualifications, fitness, behavior or temperament, to the presence of any personnel of Construction Manager or any subcontractor, such person shall not perform services on the Project site, or otherwise in connection with the Project, without written consent of the Owner.

3.4.5 The Construction Manager shall not change or replace the assigned Project Manager or Superintendent without prior written consent by the Owner.

J. SUBPARAGRAPH 3.5.1, Add to the end: "Construction Manager's warranties shall commence upon Substantial Completion of the Work for each Phase and continue for a period of one year thereafter."

K. PARAGRAPH 3.5 "WARRANTY" is hereby supplemented by the addition of the following sub-paragraphs:

3.5.2. In the event of a claim by the Owner against the Construction Manager under Paragraph 3.5.1. of these General Conditions (or under any other express written warranty made by the Construction Manager) for any item of Work performed under the Contract Documents, the Owner shall give notice (a "Warranty Notice") of the claim to the Architect and the Construction Manager and thereafter, the Architect or Architects authorized representative and the Construction Manager shall inspect the item(s) of Work in question. If following its inspection the Architect determines that any such item is included within the Construction Manager's warranty under the Contract Documents, then:

(a) Upon formal notification from the Architect, the Construction Manager shall have thirty (30) days, notwithstanding any other time period specified in the Contract Documents, to either (1) complete the cure for the item or, for a Longer Cure Item, commence the cure and thereafter diligently proceed to complete the cure, or (2) if the Construction Manager disputes the warranty coverage of the item, commence the

dispute resolution procedures described in Section 4.3 of the General Conditions.

(b) If upon the expiration of the thirty (30) day period the Construction Manager has failed to satisfy the provisions of either clause (a) (1) or clause (a) (2) immediately above, then the Owner shall have the right to engage a third party Construction Manager of the Owner's sole selection to cure or complete the cure of the warranty item at the Construction Manager's expense.

(c) If the Construction Manager fails to cure an item within the required time and if the item is finally determined by arbitration or, when permitted, judicial proceedings to be covered by any Construction Manager's warranty under the Contract Documents, then the Construction Manager shall be liable for all expenses incurred by the Owner in enforcing its warranty claim including legal and Architectural fees and expenses, an administrative charge of a percentage equal to Construction Manager's fee times the cost to cure the warranty item to cover the Owner's administrative costs to enforce the warranty claim, and, when a third party Construction Manager has been engaged by the Owner under this Paragraph 3.5.2, the costs and expenses of the third party Construction Manager.

L. INTENTIONALLY OMITTED

M. ARTICLE 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES is supplemented by the following replacement language for Subparagraph 3.12.4

3.12.4 Shop Drawings, Product Data, Samples and similar submittals which are required by the Contract Documents to be submitted for Architect's review shall become Contract Documents upon Architect's review and approval. Submittals which are not required by the Contract Documents to be submitted for Architect's review are not Contract Documents.

N. ARTICLE 3.16 "ACCESS TO WORK" is hereby supplemented by addition of the following Subparagraph:

"3.16.2 Representatives of the State Agencies shall have access at all reasonable times to the Work wherever it is in preparation or progress, and the Construction Manager shall provide proper facilities for such access and inspection."

O. PARAGRAPH 4.2.4 "COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION" is hereby supplemented by the additions of the following subparagraphs: Nothing contained herein shall prohibit the Owner's Representative from communicating directly with the Construction Manager for the purpose of receiving information and/or providing the Construction Manager with clarification as to Owner's position with regard to any matters affecting or concerning the Work.

4.2.4.1 The following definitions shall apply to construction communications:

4.2.4.1.1 Contract Document Clarifications: An answer from the Architect, in response to an inquiry from the Construction Manager, intended to make some

requirement(s) of the Drawings or plans clearly understood. Drawing/plan clarifications may be sketches, drawings, or in a narrative form and are not intended to change any requirements of the Contract Documents. Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.2 Non-Conformance Notice: A Notice issued by the Architect documenting that the Work or some portion thereof has not been performed in accordance with the requirements of the Contract Documents. Payment shall not be made on any portion of the Work for which a Non-Conformance Notice has been issued and the Work not corrected to the satisfaction of the Architect.

Upon receipt of a Non-Conformance Notice the Construction Manager shall provide a written Response to the Non-Conformance Notice within five (5) working days after receipt of the Notice. The Construction Manager's response shall state either (a) the basis of Construction Manager's determination that the Work was performed in accordance with the Contract Documents or (b) the corrective action Construction Manager intends to take, at its sole expense, to correct the non-conforming work

If the Construction Manager disputes issuance of the Notice the Architect has five (5) working days in which to respond by either (a) withdrawing the Notice of Non-Conformance or (b) directing the Construction Manager to correct the Work.

If directed to correct the Work, the Construction Manager shall do so within five (5) working days after receipt of such direction from the Architect, or such other time as may be agreed to with the Architect, without loss of rights for claim recovery or dispute resolution as may be available by the Contract.

4.2.4.1.3 Requests for Information: A written request from the Construction Manager or one of its subcontractors, to the Architect, seeking an interpretation or a clarification of some requirement of the Contract Documents. The Construction Manager shall clearly and concisely set forth the issue for which it seeks clarification or interpretation and why a response is needed from the Architect.

Responses to Construction Manager inquiries shall be as outlined in the Article "Requests For Information" of these General Conditions.

4.2.4.1.4 Substitution/Or-Equal Submittals: A written request from the Construction Manager to substitute a material, article, device, product, fixture, form, type of construction, or process called for in the Contract Documents with another item that shall substantially equal in all respects to that so indicated or supplied. Each such request shall specifically set forth any manner in which the proposed change does not conform to the Contract Documents and Construction Manager (and any subcontractor initiating the request) warrants that the proposed substitute conforms in all respects with the contract documents except as specifically identified as non-conforming in the request.

4.2.4.1.5 Submittals/Shop Drawings: When required by any technical specification included in these Contract Documents, the Construction Manager shall transmit to the Architect technical submittals, shop drawings, or samples, including supporting catalog cuts, manufacturer's literature, sketches or drawings, calculations, and other pertinent, in sufficient detail to enable the Architect to review the information and determine that the Construction Manager clearly understands the requirements of the Contract Documents. Construction Manager (and any subcontractor initiating a submittal) warrants that all Work and materials depicted in technical submittals, shop drawings and samples shall conform in all respects to the requirements of the Contract Documents, except as otherwise specifically identified as non-conforming.

4.2.4.1.6 Schedule Submittals: When required by the Construction Schedule Specification of these Contract Documents, the Construction Manager shall submit required schedules, schedule updates, schedule revisions, time impact analysis, etc. for review.

P. INTENTIONALLY OMITTED

Q. SUBPARAGRAPH 4.3.7.2 is hereby revised (and paragraphs 4.3.73 and 4.3.7.4 are added) to read as follows:

4.3.7.2 Weather days: Construction Manager confirms that the Contract Time, Phased Contract Time and the agreed upon dates for same as set forth in Amendment No. 1 to this Agreement are reasonable periods to perform The Work. Construction Manager has included in the work schedule ordinary and normally anticipated lost days due to adverse weather ("weather days") and therefore Construction Manager shall not be entitled to an extension of the Contract Time or Phased Contract Time as a result of weather conditions normally experienced in the greater Santa Fe area unless (1) the Construction Manager is unable to make up for the weather delay by scheduling work for a Saturday in accordance with in 4.3.7.2 below, and (2) the number of weather days lost (and not made up by Saturday work) in that calendar month exceeds the number of weather days provided for in the Contract Time.

4.3.7.3 The Construction Manager's work schedule is based upon a regular five-day work week per calendar week. It is mutually agreed that in the event of a weather day the Construction Manager, before requesting a time extension the Construction Manager will first try to make up that weather day on the next Saturday available during the following 30 calendar days. A Saturday will be considered to be "available" only if all of the following conditions are met: (1) no work has already been scheduled for that day that would interfere with the work being rescheduled, (2) it is not a national holiday, (3) working on that Saturday is allowed by local ordinance, and (4) materials and workforce equivalent to what was scheduled for the lost weekday are available on that Saturday. The Construction Manager will only be required to utilize a Saturday if either (a) the Construction Manager incurs no additional cost in rescheduling work for that Saturday, or (b) the Owner agrees to compensate the Construction Manager (by Change Order) for any additional costs (such as for labor rate differential) the Construction Manager may incur.

4.3.7.4 The requirement stated above for the Construction Manager to utilize a Saturday to make up for a weather delay only applies the number of weather days included in each calendar month as indicated in the following list of Anticipated Lost Days. For every weather day beyond the number included below, the Construction Manager shall be entitled to an equivalent number of days extension to the Contract Time. The Construction Manager may (at the CM's sole discretion) attempt to mitigate the delay utilizing additional Saturdays as outlined in 4.3.7.3, but has not obligation to do so.

For the purposes of this Paragraph the table provided below setting forth the norms/anticipated lost weather days shall be utilized by the parties in determining lost weather days:

Month	Anticipated Lost Days Due to Adverse Weather
January	1
February	1
March	0
April	1
May	0
June	0
July	1
August	1
September	2
October	2
November	1
December	0

See the Exhibit D "Weather Delays" - attached to the Contract.

R. INTENTIONALLY OMITTED

S. SUBPARAGRAPH 4.6.8, add as new subparagraph :

"4.6.8 Limitations of Arbitration. Notwithstanding anything in the Contract Documents to the contrary, if (1) the Claims involve a proposed, net aggregate payment to owner or Construction Manager in an amount greater than $100,000 or (2) the Claims involve an interested person or entity (including the Architect) who has not consented to be joined in the arbitration, then arbitration shall apply only if both parties consent to arbitration. For this purpose an "interested person or entity" means any person or entity if (3) in such interested person or entity's absence, complete relief cannot be accorded among those already parties, or (4) the interested person or entity is so situated that the disposition of the Claim without the joinder of such interested person or entity may leave any of those already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. If both parties do not consent to arbitration for such Claims as described herein, then all requirements, conditions, and conditions precedent pertaining to arbitration shall be deemed appropriately adjusted to permit either party to pursue such Claims as otherwise permitted by the Contract Documents or by law."

T. SUBPARAGRAPH 5.2.1, change "promptly" to "within 10 days" in lines 5 and 7.

U. PARAGRAPH 7.3 "CONSTRUCTION CHANGE DIRECTIVES"

Subparagraph 7.3.3.3 is hereby changed to read as follows:

7.3.3.3 The following fees apply to Changes to the Work;

7.3.3.3.1 INTENTIONALLY OMITTED

7.3.3.3.2 The same markup applied by the subcontractor in the subcontractors base subcontract, which shall be defined in said subcontract and subject to Owner's approval, to the cost of work performed by any subcontractor.

V. INTENTIONALLY OMITTED

W. INTENTIONALLY OMITTED

X. PARAGRAPH 9.8.1. of the General Conditions is hereby deleted in its entirety and the following is substituted in lieu thereof:

9.8.1 "Substantial Completion" of the Project shall be deemed to occur when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and, in addition, all requirements of the Contract Documents for Substantial Completion, including the following conditions, have been fulfilled as follows:

a. A Temporary of Final Certificate of Occupancy has been issued and all construction related approvals, licenses and requirements have been obtained or satisfied for the Project such that the Project may be operated for its intended use.

b. INTENTIONALLY OMITTED

Y. PARAGRAPH 9.8.2. of the General Conditions is hereby deleted in its entirety and the following Paragraphs 9.8.2.1. through 9.8.2.6. are substituted in lieu thereof:

9.8.2.1. When the Construction Manager considers that the Work, or portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Following receipt of the Construction Manager's list, the Architect will make an inspection (the "Initial Punch List Inspection") to determine whether the Work or designated portion thereof is Substantially Complete. Upon completion of its Initial Punch List Inspection, the Architect shall prepare and submit to the Construction Manager and the Owner the Architect's list (the "Punch List") of items to be completed or corrected. For the items on the Punch List, the Architect shall specify:

a. a date (a "Punch Item Date") by which such items shall be completed, which Punch Item Date shall be no more than forty-five (45) days from the date of the Punch List unless the Architect determines that reasonable cause exists for a later completion date; and

b. the cost to complete or correct the items as reasonably determined by the Architect.

The Architect shall expressly state on the Punch List what the Construction Manager must do to achieve Substantial Completion under Paragraph 9.8.1 of the General. If as a result of the Initial Punch List Inspection the Architect determines that Substantial Completion has occurred, the Architect shall prepare a Certificate of Substantial Completion pursuant to Paragraph 9.8.2.5 below.

9.8.2.2 If the Construction Manager has not given notice that the Work is substantially complete and requested inspection thereof on or before the date for Substantial Completion set by the parties in the Contract Documents, then the Owner may request the Architect to make an Initial Punch List Inspection of the Work to (x) prepare the Punch List pursuant to the provisions of Paragraph 9.8.2.1. above and (y) determine if Substantial Completion has occurred.

9.8.2.3. Upon the request of the Construction Manager prior to the expiration of the relevant Punch Item Date(s) and for good cause shown, the Architect may extend any Punch Item Date(s) for a reasonable period. Following receipt of the Punch List and the Construction Manager's compliance with the requirements of Paragraph 9.8.1. above, the Construction Manager may submit a request for another inspection by the Architect, if necessary, to determine whether Substantial Completion of the Work has been achieved.

9.8.2.4. If the Construction Manager fails to satisfactorily complete any item(s) on the Punch List by the applicable Punch Item Date(s), then the Owner has the right to take over the work in accordance with Section 2.4 of the General Conditions.

9.8.2.5.When the requirements of Paragraph 9.8.1. above have been met and upon the request of either the Owner or the Construction Manager, the Architect shall prepare a Certificate of Substantial Completion, in the form set out in Paragraph 9.8.3 below, which shall establish the date of Substantial Completion and shall establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise specifically stated in the Contract Documents or in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Construction Manager for their written acceptance of responsibilities assigned to them in such certificate.

Z. INTENTIONALLY OMITTED

AA. In addition to the provisions of Paragraph 9.10 Final Completion shall not have been deemed to have occurred until the date upon which all of the following have occurred:

a. INTENTIONALLY OMITTED

b. Delivery of conditional or unconditional lien waivers from each person who performed work at or provide or fabricated materials in connection with the Work (including all subcontracts executed in connection therewith), other than from those persons whose claims are being contested by Construction Manager in good faith and for which Construction Manager has provided to Owner a bond or security in an amount reasonably acceptable to Owner, and

c. Issuance and obtaining of a final, unconditional certificate of occupancy and all construction-related approvals, licenses, and requirements for the Project enabling it to be occupied and operated for its intended use.

BB. SUBPARAGRAPH 9.10.4.1, after "Claims" add: "previously made in writing and identified by Owner as unsettled at the time of final payment."

CC. Paragraph 10.1.1 add the following: "Construction Manager shall prepare and submit to Owner for Owner's approval a comprehensive safety program. Further, Construction Manager shall provide written verification and certification in a form satisfactory to the

Owner, that all subcontractors have familiarized themselves with the safety program and agreed to abide by said program and training regimen thereunder.

DD. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." In the first line of Subparagraph 11.1.1, following the work " companies," insert the following:

", acceptable to the Owner,."

EE. PARAGRAPH 11.1 "CONSTRUCTION MANAGER'S LIABILITY INSURANCE." Add the following to subparagraph 11.1.3:

"Certificates called for herein shall be furnished in duplicate and shall specifically set forth evidence of all coverage required by 11.1.2 and the Construction Manager shall furnish to the Architect copies of all endorsements that are subsequently issued amending coverage or limits."

FF. SUBPARAGRAPH 13.4.3, add as a new subparagraph:

"In the event of any litigation between the parties, the prevailing party shall be entitled to reimbursements for all reasonable attorneys' fees, expert fees, court costs, and all other third-party costs of the litigation incurred by the prevailing party to the extent allowed by law."

GG. PARAGRAPH 13.5 "TESTS AND INSPECTIONS" is hereby supplemented by the addition of the following subparagraph:

"13.5.7 When work has been installed contrary to any Contract requirements and the Construction Manager requests the privilege of testing in lieu of removal, such testing shall be at the Construction Manager's expense."

HH. INTENTIONALLY OMITTED

II. Add the following new Article:

ARTICLE 15: REQUESTS FOR INFORMATION

15.1.1 In the event that the Construction Manager or its subcontractor, at any tier, determines that some portion of the Drawings, Specifications, or other Contract Documents requires clarification or interpretation by the Architect, the Construction Manager shall submit a Request for Information in writing to the Architect. Requests for Information may only be submitted by the Construction Manager and shall be only submitted on the Request for Information Forms provided by the Architect. The Construction Manager shall clearly and concisely set forth the issue for which clarification and interpretation is sought and why a response is needed from the Architect. If the Request for Information is being used to request confirmation of an interpretation or understanding of a requirement, the Construction Manager shall set forth that interpretation or understanding of the requirement along with reasons why such an understanding was reached.

15.1.2 The Architect will review all Requests for Information to determine whether they are Requests for Information within the meaning of this term. If the Architect determines

that the document is not a Request for Information, it will be returned to the Construction Manager, unreviewed as to content, for resubmittal on the proper form and in the proper manner. In either case, the Architect must reply to RFI in writing within the time requested by the Construction Manager, or three (3) working days, whichever is earlier.

15.1.3 Responses from the Architect are not intended to change any requirement of the Contract Documents. In the event the Construction Manager believes that a response to a Request for Information will cause a change to the requirements of the Contract Document, the Construction Manager shall immediately give written notice to the Architect in accordance with Section 4 of the General Conditions stating that the Construction Manager considers the response to be a change in the scope of work or a change to the project schedule..

END OF SUPPLEMENTARY CONDITIONS

RainbowVision Santa Fe/Wels Contract Agreement
Exhibit "C"

Weather Delays

1. A "Work Day" is defined at Monday thru Friday, 7:30 am– 4:400 pm.

2. The occurrence of one or more of the following will constitute a weather delay as indicated:

   a. 0.25" of rain during the workday constitutes one lost workday
   b. 2.0" of snow during the workday constitutes one lost workday
   c. 12" of snow in a 24-hour period constitutes two lost workdays.
   d. Temperature of 5 degrees below zero (Fahrenheit) constitutes one lost workday.
   e. Any drying time required for soil stabilization (as directed by the geotechnical engineer) due to rain or snow will constitute lost work day(s).

3. Weather days will be included in the final schedule approved as part of the GMP proposal to be incorporated into the contract by amendment. The number of weather days included will be in accordance with Section 3.P of Exhibit B. Adjustments to the contract completion dates due to adverse weather will be made in accordance with Section 3.P of Exhibit B.

RainbowVision Santa Fe/Wels Contract Agreement
Exhibit "D"
Personnel Billing Rates

Position	Reimbursable as a Cost of the Work (w/in GMP)	Included in Fee	Notes	Expected to be Full or Part Time	Billing Rate ($/hr)
Field Staff Stationed on Site					
Superintendent	X		1	Full	$70
Project Engineer, QA/QC	X		1	Full	$60
Carpenter	X		2	Full	Varies - local rate
Laborer	X		2	Full	Varies - local rate
Personnel Not Stationed on Site					
Vice President		X			
CFO		X			
Project Manager	X		3	Part	$75
General Superintendent	X		3	Part	$75
Project Coordinator		X			
Safety Director	X		3	Part	$50
Project Accountant		X			
Pre-Construction Personnel					
Senior Estimator/Pre-Con Services M	X		4	Part	$90
Assistant Estimator	X		4	Part	$60

Notes:

1 Field staff on project site.
2 It is expected that all trade work will be subcontracted. Trade labor rates shown only if need for Gen Conditions.
3 Billed only for time spent on site and traveling to project
4 Billed only for time during pre-construction phase, subject to Pre-construction services billing cap (see Exhibit F).

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit E
Project Scope & Budget Summary

- The Scope of the project includes:
  - 40 Single-story Condominium living units
  - 80 Single-level Independent Living units built in a series of two-story buildings
  - 26 Assisted Living apartments (and related support spaces) constructed on the 2nd level of the central services building
  - Central services building (El Centro) containing commercial kitchen, dinning spaces, activity spaces, administrative and marketing offices, retail spaces, and a spa/wellness center.
  - ~~13 acres of site development, with some off-site, public improvements~~
  - Total building area is approximately 183,000 sf.

- Based on a preliminary site plan and building design commissioned by the Owner, the Construction Manager prepared a detailed, preliminary cost report and presented that report to the Owner on February 1, 2004. Based on that scope and cost report, the Owner has established a construction budget of $20,540,000, based on the Preliminary Divisional Cost Breakdown shown in Exhibit F.
- The Owner has contracted with the Architect to complete the design of the project in accordance with the budget stated above. The completion of the design, and related activities is proceeding in accordance with the Preconstruction Phase Schedule prepared and updated regularly by the Construction Manager. See Exhibit G.

- The Construction Manager has also prepared a Preliminary Construction Schedule. See Exhibit H. A final Construction Schedule will be included in the GMP report and made part of the contract by amendment.

- The Owner, Architect and Construction Manager are working together to monitor the completion of the design to ensure meeting the Construction Budget.

- Upon receipt of the Design Development documents, the Construction Manager will, in accordance with contract Section 2.2 prepare a GMP report that will include all of the elements outlined in Section 2.2.4. Prior to submitting the final GMP report, the Construction Manager will review the preliminary cost estimates with the Owner and Architect to determine if any adjustments to scope are required in order to achieve the construction budget stated above. Upon approval by the Owner, the GMP will be incorporated into the contract by amendment, in accordance with Section 2.2.

- *During the completion of the design The Construction Manager will continue to meet regularly with the Owner and Architect, and will regularly review the Architect's work in progress to monitor the design as a means to ensure conformance to the construction budget.*

RainbowVision Santa Fe/Weis Contract Agreement
EXHIBIT F

Preliminary Divisional Cost Breakdown

C.S.I. SYSTEMS BREAKDOWN		Total Costs	%
Division 1 - General Conditions		$1,047,401	5.9%
Division 1 - Building Permit Allowance		$184,620	1.0%
Division 2 - Site Construction		$1,534,319	8.7%
Division 3 - Concrete		$965,149	5.5%
Division 4 - Masonry		$488,508	2.8%
Division 5 - Metals		$439,822	2.5%
Division 6 - Woods & Plastics		$2,609,476	14.8%
Division 7 - Thermal & Moisture Protection		$969,353	5.5%
Division 8 - Doors & Windows		$771,105	4.4%
Division 9 - Finishes		$3,286,198	18.6%
Division 10 - Specialties		$592,969	3.4%
Division 11 - Equipment (See Note 1)		$445,320	2.5%
Division 12 - Furnishings (See Note 2)		$49,196	0.3%
Division 14 - Conveying		$230,919	1.3%
Division 15 - Mechanical		$2,410,820	13.7%
Division 16 - Electrical		$1,636,100	9.3%
Sub-Total		$17,661,276	100%
Escalation - For 2004	0.0%	-	
Sub-Total		$17,661,276	
Est./Const Contingency - El Centro	5.0%	$243,521	
Est./Const Contingency - Balance	3.0%	$383,726	
Sub-Total		$18,288,523	
Builders Risk Insurance	0.8%	$146,308	
Liability Insurance	0.85%	$156,696	
		$18,591,527	
Construction Manager Fee	3.00%	$557,748	
Sub-Total		$19,149,273	
Performance and Payment Bond		$108,393	
NM Gross Receipts Tax		$1,284,062	
Project Totals		**$20,539,728**	

Notes:

1. "Equipment" includes residential appliances, commerical kitchen and laundry equipment.
2. "Furnishings" does not include FF&E - which is being designed and purchased by the Owner under a separate contract.

RainbowVision Santa Fe/Wels Contract Agreement
Exhibit G
Preconstruction Phase Schedule

Refer to the "Preconstruction Schedule" dated _____ (filename: RVSF007), attached separately but made a part of this Exhibit by reference.

RainbowVision Santa Fe/Weis Contract Agreement
Exhibit H
Preliminary Construction Phase Schedule

Refer to the "Preliminary Construction Schedule" dated _____ (filename: _____), attached separately but made a part of this Exhibit by reference.

Amendment No. 1
(Revised December 15, 2004)
To Contract Agreement Between
RainbowVision Santa Fe, LLC and Weis Builders, Inc

In accordance with article 2.2.9 of the Contract Agreement, the Guaranteed Maximum Price (GMP) and Project Schedule are hereby modified to reflect the following:

- The Guaranteed Maximum Price will be Twenty-One Million Five Hundred Thirty Nine Thousand, Seven Hundred Twenty-Eight Dollars ($21,539,728).

- The Construction Start date will be January 3, 2005. Based on that start date:
- The Substantial Completion date for Buildings 16, 17, 18, 19, and 20 will be October 28, 2005.
- The Substantial Completion date for the balance of the project will be April 26, 2006.

Accordingly, the GMP Divisional Cost Breakdown (Exhibit F) shall be modified as per the attached revision, dated September 30, 2004. The revised GMP is based on the following:

- Weis September 15, 2004 "Confirmation of GMP" letter (with attachments)
- Weis September 30, 2004 "Summary of Approved Enhancements"

The Construction Schedule (Exhibit H) shall be as shown in the attached update, dated December 15, 2004.

For:
RainbowVision Santa Fe, LLC

(Signature)

JOY SILVER, PRESIDENT
(Printed Name and Title)
RAINBOWVISION PROPERTIES, INC
MANAGING MEMBER

(Date)

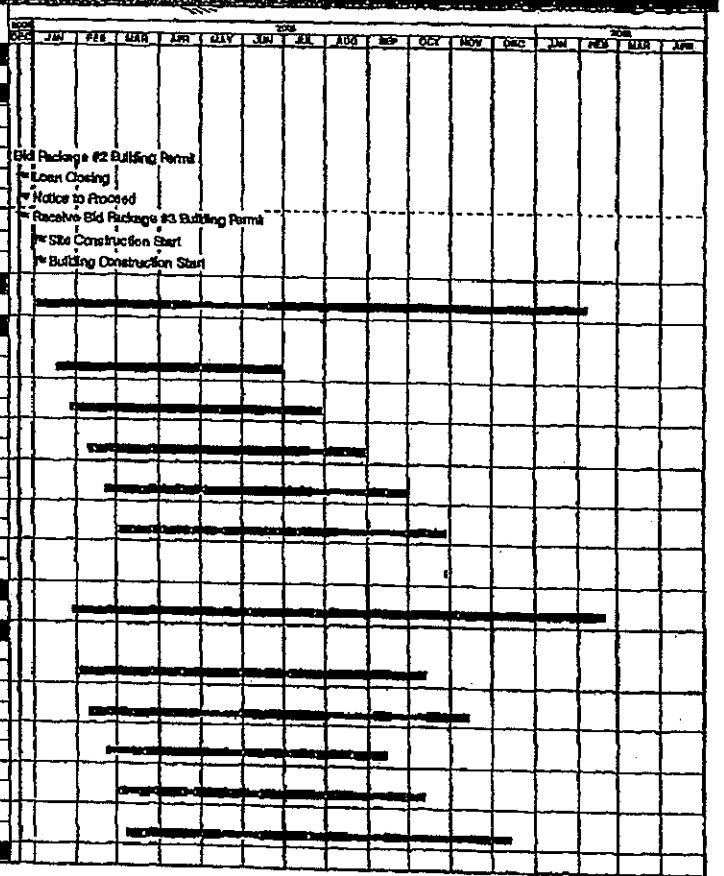
For:
Weis Builders Inc.

(Signature)

PETER WORTHINGTON, VICE PRESIDENT
(Printed Name and Title)

DEC-15, 2004
(Date)

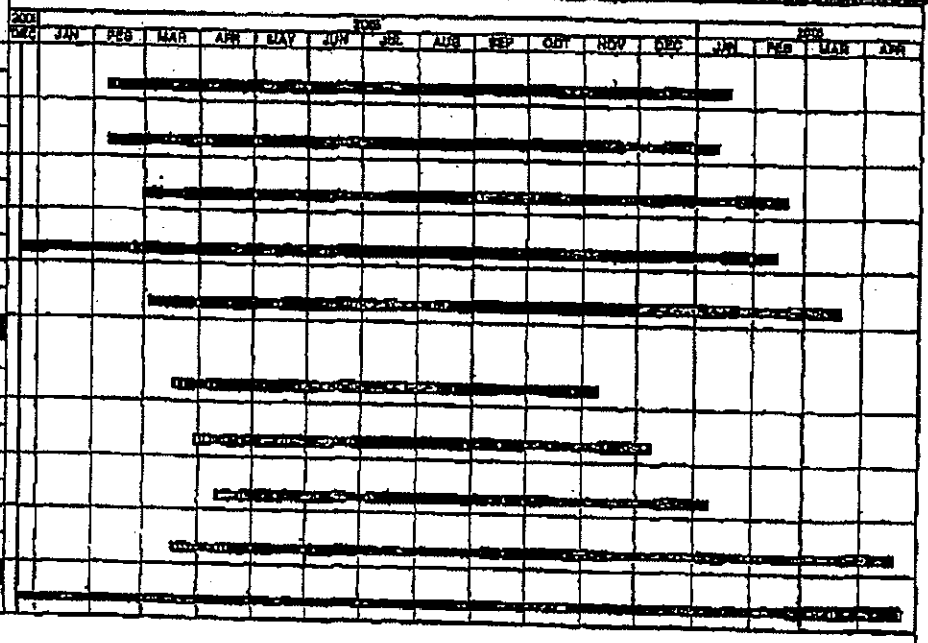
Act ID	Description	Dur	Early Start	Early Finish
Procurement				
1060	Receive Utilities Permit	0	05AUG04 A	
1120	Receive Grading Permit	0	05AUG04 A	
1080	Receive Bid Package #2 Building Permit	0	02NOV04 A	
1000	Loan Closing	0	22DEC04	
1005	Notice to Proceed	0	22DEC04	
1100	Receive Bid Package #3 Building Permit	0	22DEC04	
1010	Site Construction Start	0	03JAN05	
1020	Building Construction Start	0	03JAN05	
Sitework				
		285	03JAN05	06FEB06
Condominium Buildings Group 1 - North East				
+Condominium Building 20				
		117	18JAN05	28JUN05
+Condominium Building 18				
		130	28JAN05	29JUL05
+Condominium Building 19				
		144	09FEB05	30AUG05
+Condominium Building 17				
		158	21FEB05	28SEP05
+Condominium Building 16				
		171	03MAR05	28OCT05
+Closeout/Turnover Group 1 Condominiums				
		0	28OCT05	28OCT05
Closeout				
		275	28JAN05	20FEB06
Building Group 2 - South East				
+Independent Living Building 1 - 8 Units				
		180	03FEB05	19OCT05
+Independent Living Building 2 - 4 Units				
		198	09FEB05	14NOV05
+Condominium Building 3				
		147	21FEB05	14SEP05
+Condominium Building 4				
		159	03MAR05	12OCT05
+Independent Living Building 5 - 4 Units				
		201	08MAR05	14DEC05
Building Group 3 - South West				



Early bar
Progress bar
Start milestone point
Finish milestone point

Rainbow Vision Retirement Community
Santa Fe, New Mexico
Weis Builders, Inc.

Act ID	Description	Dur	Early Start	Early Finish
	+Independent Living Building 6 - 14 Units			
		247	09FEB05	20JAN06
	+Independent Living Building 7 - 10 Units			
		242	09FEB05	13JAN06
	+Independent Living Building 8 - 8 Units			
		258	28FEB05	20FEB06
	+Independent Living Building 9 - 14 Units			
		290	22DEC04	14FEB06
	+Independent Living Building 10 - 10 Units			
		272	04MAR05	21MAR06
	Buildings Group 2 - North West			
	+Condominium Building 15			
		169	18MAR05	10NOV05
	+Condominium Building 14			
		182	30MAR05	09DEC05
	+Condominium Building 12			
		195	11APR05	05JAN06
	+Independent Living Building 11 - 4 Units			
		283	18MAR05	19APR06
	Closeout			
		348	22DEC04	24APR06



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Rainbow Vision Retirement Community
Sante Fe, New Mexico
Weis Builders, Inc.

EXHIBIT 7

MARSH

CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER
SEA-000922486-02

PRODUCER

MARSH RISK & INSURANCE SERVICES
P.O. BOX 193880
SAN FRANCISCO, CA 94119-3880
CALIFORNIA LICENSE NO. 0437153

Attn: Priscilla Tom 415.743.7658

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

COMPANY A: ACE AMERICAN INSURANCE COMPANY

COMPANY B:

COMPANY C:

COMPANY D:

INSURED

Building Materials Holding Corp.;
BMC West Corporation;
A-1 Building Components, LLC
3800 Fairlane Farms Road, Suite 4
Wellington, FL 33414

74404
045602

[redacted] and replaces any previously issued certificate dated [redacted].

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

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY [redacted] CLAIMS MADE X OCCUR X OWNER'S & CONTRACTOR'S PROT X Agg Limit Per Location/Project X Deductible: $2 mil per occur.	HDOGI8072889	11/11/05	11/11/06	GENERAL AGGREGATE PRODUCTS - COMP/OP AGG PERSONAL & ADV INJURY EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED EXP (Any one person)	$ 2,000,000 $ 2,000,000 $ 2,000,000 $ 2,000,000 $ N/A $ N/A
A	AUTOMOBILE LIABILITY X ANY AUTO X ALL OWNED AUTOS X SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS X Deductible: X $1 mil. per occur.	ISAH08012799	11/11/05	11/11/06	COMBINED SINGLE LIMIT BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE	$ 2,000,000 $ $ $
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EACH ACCIDENT AGGREGATE	$ $ $
A	EXCESS LIABILITY X UMBRELLA FORM OTHER THAN UMBRELLA FORM	XOOG22912422	11/11/05	11/11/06	EACH OCCURRENCE AGGREGATE SELF INSURED RET.	$ 10,000,000 $ 10,000,000 $ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: X INCL. [ ] EXCL.	WLRC43964379	11/11/05	11/11/06	X WC STATUTORY LIMITS [ ] OTHER EL EACH ACCIDENT EL DISEASE-POLICY LIMIT EL DISEASE-EACH EMPLOYEE	$ 1,000,000 $ 1,000,000 $ 1,000,000
	OTHER Auto Physical Damage--Owned and Hired Vehicles	SELF INSURED	11/11/06	11/11/06		

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Project: Rainbow Vision Santa Fe-500 Rodeo Road, Santa Fe, NM 55707; Contract No. D45602
Weis Builders Inc. (Contractor) and Rainbow Vision Santa Fe, LLC (Owner) are included as Additional Insureds on the General Liability Policy but only with respect to liability arising out of Named Insured's operations (labor, materials and trusses). Forms CG 2010 0704 and CG 2037 0704 attached. Insurance hereunder is primary and non-contributory with respect to any insurance maintained by or available to Weis Builders Inc. (Contractor) and Rainbow Vision

CERTIFICATE HOLDER

Weis Builders, Inc.
7645 Lyndale Avenue South
Minneapolis, MN 55423

CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC.

BY: Gloria N. Brumfield

VALID AS OF: 11/30/05

ADDITIONAL INFORMATION

DATE (MM/DD/YY) 11/30/05

PRODUCER

MARSH RISK & INSURANCE SERVICES
P.O. BOX 193880
SAN FRANCISCO, CA 94119-3880
CALIFORNIA LICENSE NO. 0437153

Attn: Priscilla Tom 415.743.7658

INSURED

Building Materials Holding Corp.;
BMC West Corporation;
A1 Building Components, LLC
3300 Fairlane Farms Road, Suite 4
Wellington, FL 33414

COMPANIES AFFORDING COVERAGE

COMPANY E

COMPANY F

COMPANY G

COMPANY H

DESCRIPTION

CONTINUED FROM DESCRIPTION SECTION:

Santa Fe LLC (Owner).

CERTIFICATE HOLDER

Viale Builders, Inc.
7445 Lyndale Avenue South
Minneapolis, MN 55423

MARSH USA INC. BY

Gloria N. Brumfield

Commercial General Liability Forms 07/01/04

POLICY NUMBER: HDOGI8072889
Named Insured: Building Materials Holding Corp., BMC West Corp., et al

COMMERCIAL GENERAL LIABILITY

CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Weis Builders Inc. (Contractor) and Rainbow Vision Santa Fe LLC (Owner) 7645 Lyndale Avenue South Minneapolis, MN 55423	Project: Rainbow Vision Santa Fe-500 Rodeo Road, Santa Fe, NM 55707; Contract No. D45602 Liability arising out of Named Insured's operations (labor, materials and trusses).
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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Commercial General Liability Forms 07/01/04
POLICY NUMBER: HDOGI8072889
Named Insured: Building Materials Holding Corp., BMC West Corp., et al

COMMERCIAL GENERAL LIABILITY

CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Vicis Builders Inc. (Contractor) and Rainbow Vision Santa Fe, LLC (Owner) 7745 Lyndale Avenue South Minneapolis, MN 55423	Project: Rainbow Vision Santa Fe-500 Rodeo Road, Santa Fe, NM 55707; Contract No. D45602 Liability arising out of Named Insured's operations (labor, materials and trusses).
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

CG 20 37 07 04

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MARSH — CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER
SEA-000922486-14

PRODUCER

MARSH RISK & INSURANCE SERVICES
P. O. BOX 193880
SAN FRANCISCO, CA 94119-3880
CALIFORNIA LICENSE NO. 0437153

Attn: Priscilla Tom 415-743-7658

BMC

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

COMPANY A — ACE AMERICAN INSURANCE COMPANY
COMPANY B
COMPANY C
COMPANY D

INSURED

Building Materials Holding Corporation;
BMC West Corporation;
SelectBuild Construction, Inc.
A-1 Building Components, LLC
3500 Fairlane Farms Road, Suite 4
Wellington, FL 33414

74404
045602

COVERAGES — This certificate supersedes and replaces any previously issued certificate for the policy period noted below.

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

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR OWNER'S & CONTRACTOR'S PROT	XSL62170250A DED: $1.9MM PER OCC XS OF $100,000 SIR AGG LIMIT PER PROJECT GEN AGG SUBJECT TO POLICY MAXIMUM OF $25,000,000	11/11/06	11/11/07	GENERAL AGGREGATE	$ 2,000,000
					PRODUCTS - COMP/OP AGG	$ 2,000,000
					PERSONAL & ADV INJURY	$ 1,900,000
					EACH OCCURRENCE	$ 1,900,000
					FIRE DAMAGE (Any one fire)	$ N/A
					MED EXP (Any one person)	$ N/A
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS X DEDUCTIBLE: X $1MM PER ACCIDENT	ISAH08012970 AUTO PHYSICAL DAMAGE– OWNED & HIRED VEHICLES: SELF-INSURED	11/11/06	11/11/07	COMBINED SINGLE LIMIT	$ 3,000,000
					BODILY INJURY (Per person)	$
					BODILY INJURY (Per accident)	$
					PROPERTY DAMAGE	$
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT	$
					OTHER THAN AUTO ONLY: EACH ACCIDENT	$
					AGGREGATE	$
A	EXCESS LIABILITY X UMBRELLA FORM OTHER THAN UMBRELLA FORM	XOOG2378970A	11/11/06	11/11/07	EACH OCCURRENCE	$ 10,000,000
					AGGREGATE	$ 10,000,000
					SELF-INSURED RET.	$ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: X INCL EXCL	WLRC44466016 (AOS incl. FL) DEDUCTIBLE: $2,000,000 PER ACCIDENT	11/11/06	11/11/07	X WC STATUTORY LIMITS OTHER	
					EL EACH ACCIDENT	$ 1,000,000
					EL DISEASE-POLICY LIMIT	$ 1,000,000
					EL DISEASE-EACH EMPLOYEE	$ 1,000,000
A	OTHER GENERAL LIABILITY: SELF-INSURED RETENTION:	XSL62170250A	11/11/06	11/11/07	SELF-INSURED RETENTION:	$100,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Project: Rainbow Vision Santa Fe-500 Rodeo Road, Santa Fe, NM 55707; Contract No. D45602
Weis Builders Inc. (Contractor) and Rainbow Vision Santa Fe, LLC (Owner) are included as Additional Insureds on the General Liability Policy but only with respect to liability arising out of Named Insured's operations (labor, materials and trusses). Forms CC1E15 and CC1E15 attached.

CERTIFICATE HOLDER

Weis Builders, Inc.
7645 Lyndale Avenue South
Minneapolis, MN 55423

NOV 1 3 2006

CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC.
BY: Gloria N. Brumfield — Gloria N. Brumfield

MM1(3/02) — VALID AS OF: 11/06/06

POLICY NUMBER: XLS62170250A
Named Insured: Building Materials Holding Corporation, BMC West Corporation, SelectBuild Construction, Inc., et.al.

EXCESS COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

EXCESS COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Weis Builders, Inc. Rainbow Vision Santa Fe, LLC 7645 Lyndale Avenue South Minneapolis, MN 55423	Re: Rainbow Vision Santa Fe-500 Rodeo Road, Santa FE, NM 55707; Contract #D45602 Liability arising out of Named Insured's operations (labor, materials and trusses)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

1/3

CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER SEA-000822969-01

PRODUCER
MARSH RISK & INSURANCE SERVICES
P. O. BOX 193660
SAN FRANCISCO, CA 94119-3660
CALIFORNIA LICENSE NO. 0437153

Attn: Priscilla Tom 415.743.7666

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

COMPANY A NATIONAL UNION FIRE INS CO OF PA

COMPANY B INSURANCE CO OF THE STATE OF PA

COMPANY C

COMPANY D

INSURED
Building Materials Holding Corp.
BMC Construction, Inc.
BBD Construction, L.P.,
dba: BMC Construction
ATTN: Terry Johnson
506 Hensley Lane
Wylie, TX 75098

74404
045602

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

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	GL8946010	11/11/04	11/11/05	GENERAL AGGREGATE	$ 2,000,000
	X COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG	$ 2,000,000
	CLAIMS MADE X OCCUR				PERSONAL & ADV INJURY	$ 1,000,000
	OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	$ 1,000,000
	X Agg Limit Per Project				FIRE DAMAGE (Any one fire)	$ 100,000
	X Deductible: $1 mil. per occur.				MED EXP (Any one person)	$ 5,000
A	AUTOMOBILE LIABILITY	CA8261879 (AOS)	11/11/04	11/11/05	COMBINED SINGLE LIMIT	$ 2,000,000
A	X ANY AUTO	CA8261879 (TX)	11/11/04	11/11/05		
	ALL OWNED AUTOS				BODILY INJURY (Per person)	$
	SCHEDULED AUTOS					
	HIRED AUTOS				BODILY INJURY (Per accident)	$
	NON-OWNED AUTOS					
	X Deductible:				PROPERTY DAMAGE	$
	X $1 mil. each acc.					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
	ANY AUTO				OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	$
					AGGREGATE	$
A	EXCESS LIABILITY	BE2560837	11/11/04	11/11/05	EACH OCCURRENCE	$ 25,000,000
	X UMBRELLA FORM				AGGREGATE	$ 25,000,000
	OTHER THAN UMBRELLA FORM				SELF INSURED RET.	$ 1,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC7185000 (CA)	11/11/04	11/11/05	X WC STATUTORY LIMITS / OTH-ER	
B		WC7185001 (NV,TX,VA)	11/11/04	11/11/05	EL EACH ACCIDENT	$ 1,000,000
B	THE PROPRIETOR/ PARTNER/EXECUTIVE OFFICERS ARE: X INCL / EXCL	WC7185002 (AZ,FL)	11/11/04	11/11/05	EL DISEASE-POLICY LIMIT	$ 1,000,000
					EL DISEASE-EACH EMPLOYEE	$ 1,000,000
	OTHER Auto Physical Damage–Owned & Hired Vehicles	SELF INSURED	11/11/04	11/11/05		

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Project: Rainbow/Vision Santa Fe - 500 Rodeo Road, Santa Fe, NM 85707; Contract/Job No.: 045602
Weis Builders, Inc. (Contractor) and Rainbow Vision Santa Fe, LLC (Owner) are named as Additional Insureds (except Workers' Compensation) but only with respect to liability arising out of Named Insured's operations (labor, materials, and trusses). Forms CG 2010 0704 and CG 2037 0704 attached. Insurance hereunder is primary and non-contributory.

CERTIFICATE HOLDER

Weis Builders, Inc.
7645 Lyndale Avenue South
Minneapolis, MN 55423

CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC.
BY Gloria N. Brumfield

VALID AS OF: 11/22/04

2/3

Commercial General Liability Forms 07/01/04

POLICY NUMBER: GL6948010

Named Insured: Building Materials Holding Corp., BMC Construction, et al

COMMERCIAL GENERAL LIABILITY

CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Weis Builders, Inc. (Contractor) 7645 Lyndale Avenue South Minneapolis, MN 55423 Rainbow Vision Santa Fe, LLC (Owner)	RE: RainbowVision Santa Fe – Santa Fe, NM
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or

2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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Commercial General Liability Forms 07/01/04
POLICY NUMBER: GL6946010
Named Insured: Building Materials Holding Corp., BMC Construction, et al

COMMERCIAL GENERAL LIABILITY

CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Weis Builders, Inc. (Contractor) 7645 Lyndale Avenue South Minneapolis, MN 55423 Rainbow Vision Santa Fe, LLC (Owner)	RE: RainbowVision Santa Fe – Santa Fe, NM
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

CG 20 37 07 04

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EXHIBIT 8

ENDORSED
First Judicial District Court
APR 21 2009
Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

THE STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT OF

RAINBOW VISION SANTA FE, LLC,

Plaintiff,

No. D-0101-CV-2007-00010

V.

WEIS BUILDERS, INC.
PCI CONTRACTORS, INC., and
RLA, INC.,

Defendants.

and

WEIS BUILDERS, INC.,

Third-Party Plaintiff,

V.

RODGERS PLUMBING AND HEATING, INC.,
EKER BROTHERS, INC.,
TLC COMPANY,
EMCO, INC.,
SUPERIOR CONTRACTING CORPORATION, D/B/A AMERICAN NATIONAL INSULATION AND SEALANTS,
BMCW SOUTHCENTRAL, L.P. D/B/A BMC CONSTRUCTION,
BBD CONSTRUCTION, L.P., as successor in interest to or assignee of BMC CONSTRUCTION,
MAVERICK FRAMING, INC., as successor in interest to or assignee of BMC CONSTRUCTION,
PCI CONTRACTORS, INC.;
WESTERN TECHNOLOGIES, INC.,
VALLEY FIRE PROTECTION, INC.,
STORM WATER CONTROL, INC.,
PINON WINDOW & DOOR, INC.,
MICHAEL HUNTER PAINTING, INC.,
MESA ERECTORS, INC.,
LOPEZ ROOFING SERVICE, INC.,
KOCH MECHANICAL,
KLEIN ENTERPRISES, LLC;
HUGHES AND ASSOCIATES, INC.,

GEO-TEST, INC.,
F & J HOME BUILDERS, INC.,
DAWSON SURVEYS, INC., AND
BOHANNAH-HUSTON, INC.,

Third-Party Defendants.

THIRD AMENDED SCHEDULING ORDER

Pursuant to Rule 1-016 NMRA, the Court enters the following amended scheduling order:

1. Motions to amend the pleadings or to join parties shall be filed by July 30, 2009.
2. Motion addressed to the pleadings shall be filed by July 30, 2009.
3. * Third Party Plaintiffs shall file with the Court a list of all lay witnesses who may be called to testify at trial by October 1, 2009.
4. * Third Party Defendants shall file with the Court a list of all lay witnesses who may be called to testify at trial by October1, 2009.
5. * Third Party Plaintiffs shall file with the Court a list of all expert witnesses who may be called to testify at trial by November 1, 2009. A copy of any such experts' opinions or report shall be forwarded to all counsel on or before said date.
6. * Third Party Defendants shall file with the Court a list of all expert witnesses and opinions who may be called to testify at trial by January 25, 2010. A copy of any such experts' opinions or report shall be forwarded to all counsel on or before said date.
7. * Discovery shall be completed by June 1, 2010. Parties shall seek discovery sufficiently before this date so that persons responding to discovery reasonably

may comply with discovery requests prior to the deadline.

8. All other motions, except for motions in limine, shall be filed by May11, 2010.

9. *All parties shall file with the Court a preliminary exhibit list by October 1, 2009. The exhibit list shall state the reasonable place where such exhibits may be inspected and copied. The parties shall file a final exhibit list and shall exchange copies of marked exhibits by May 10, 2010.

10. All parties shall file specific objections to other parties' proposed exhibits by June 30, 2010.

11. Third party Plaintiffs should submit their portions of the pretrial order to defendants by August 1, 2010. Third party defendants shall file the proposed final pretrial order with the Court by August 15, 2010.

12. All parties shall file a final witness list by Court by March 1, 2010. The final witness list shall list "will call" and "may call" witnesses and may include any witnesses listed on any party's earlier witness list but may not include additional witnesses except by leave of Court or consent of all parties.

13. Proposed jury instructions shall be submitted to the Court by August 25, 2010. Pretrial conference shall be held at July 30, 2010 at 1:30 pm. All trial counsel shall appear for the pretrial conference.

14. Motions in limine shall be filed June 15, 2010.

15. Dates contained in paragraphs of this order marked with asterisk (*) may be modified by written agreement of all parties, without Court approval. Only the Court, for good cause, may change other dates.

16. The matter is set for (jury) trial on August 30, 2010 (on a trailing docket).

17. The parties shall complete initial mediation with an agreed mediator by August 31, 2009.

HONORABLE JAMES HALL

JAMES A. HALL
District Court Judge

Submitted by,

RHODES & SALMON, P.C.

Attorneys for Weis Builders, Inc.
William C. Salmon
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Approved by telephone 3/11/09

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Approved as to form by:

Jack N. Hardwick
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Approved by email 3/11/09

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_____

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_____

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Approved by email 3/12/09

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Approved by email 3/19/13

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EXHIBIT 9

RHODES & SALMON P.C.
ATTORNEYS AT LAW

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WILLIAM C. SALMON
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ALBUQUERQUE, NM 87104
VOICE: 505.247.0328
FAX: 505.766.9402
E-MAIL: wcs@rpcnm.com
WEB: www.rhodesandsalmon.com

FACSIMILE COVER SHEET

TO : Tonya Mac Beth, Mitch Resnick

FAX NO : (602) 234-0341

RE : Weis Builders, Inc
Case no.: D-0101-CV-2007-00010

FROM : Bill Salmon

DATE : 7/13/09

MESSAGE :

I am faxing a copy of a letter from Bankruptcy counsel for BMCW dated 7/10/09 contending the Weis case is stayed as to all parties, and a copy of a Bankruptcy Court Notice.

NOTICE OF CONFIDENTIALITY

THIS FACSIMILE TRANSMISSION AND ANY DOCUMENTS OR OTHER INSTRUMENTS ACCOMPANYING IT MAY CONTAIN CONFIDENTIAL INFORMATION BELONGING TO RHODES & SALMON, P.C., OR ANY OF ITS CLIENTS, ALL OF WHICH ARE PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU HAVE INADVERTENTLY RECEIVED THIS TRANSMISSION IN ERROR, OR OTHERWISE, AND ARE NOT THE INTENDED RECIPIENT, PLEASE TAKE NOTICE THAT ANY DISCLOSURE, COPYING, DISTRIBUTING, COMMUNICATING OR OTHER ACTION ON YOUR PART IN RELIANCE UPON, OR OTHERWISE INVOLVING ANY PARTY OF THIS TRANSMISSION, IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE IMMEDIATELY NOTIFY RHODES & SALMON BY TELEPHONE TO ARRANGE FOR THE RETURN OF ALL DOCUMENTS AND OTHER INSTRUMENTS ACCOMPANYING THIS TRANSMISSION.

GIBSON, DUNN & CRUTCHER LLP
LAWYERS
A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

2100 McKinney Avenue, Suite 1100 Dallas, Texas 75201-6911
(214) 698-3100
www.gibsondunn.com

jgraves@gibsondunn.com

July 10, 2009

Direct Dial
(214) 698-3225
Fax No.
(214) 571-2957

Client No.
C 08299-00104

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William C. Salmon
1801 Lomas Blvd. NW
Albuquerque, NM 87104

Re: *Rainbow Vision Santa Fe, LLC v. Weis Builders, Inc. et al. v. Rodgers Plumbing and Heating, Inc. et al.*
No. D 0101 CV 2007-00010 (the "Action")

Dear Mr. Salmon:

We are the attorneys for Building Materials Holding Corporation and its affiliates, including BMC West Corporation (misidentified in the Third Amended Third-Party Complaint as BMCW Southcentral L.P., d/b/a MBC Construction, BBD Construction, L.P., as successor in interest to or assignee of BMC Construction), (the "BMHC Companies"). Please be advised that the BMHC Companies filed voluntary petitions under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on July 16, 2009. The BMHC Companies' chapter 11 cases are being jointly administered under case number -09-12074.

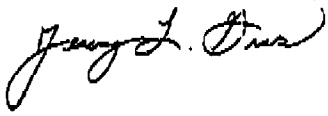
Please be advised that the automatic stay imposed by section 362(a) of the Bankruptcy Code prevents the continuation of the Action against the BMHC Companies. Section 362(a)(1) of the Bankruptcy Code provides that the filing of a bankruptcy petition operates as a stay of, among other things, the commencement or continuation of any judicial action that was or could have been commenced before the commencement of the bankruptcy case or to recover a claim against the debtor that arose before the commencement of the bankruptcy case. The stay is automatic; it arises by operation of federal law immediately upon the filing of the bankruptcy petition and requires no notice to affected parties to effectuate.

GIBSON, DUNN & CRUTCHER LLP

Please cease and desist from any effort to continue the Action while the BMHC Companies are a party thereto or are in any manner purported to be bound thereby. If the Action is to proceed against other defendants, you should take immediate steps to dismiss or sever any BMHC Company from the Action. Any attempt to continue the Action without first dismissing or severing any BMHC Company will result in the commencement of appropriate proceedings before the Bankruptcy Court, including but not limited to a request for the imposition of costs and sanctions against you for willful violation of the automatic stay.

Thank you for your attention to this matter. If you have any further questions, please call me at (214) 698-3225.

Very truly yours,



Jeremy L. Graves

JLG/kab

cc: Len Baumann
Martin Diamond

50165938_2.DOC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	**Chapter 11**
BUILDING MATERIALS HOLDING CORPORATION, *et al.*,	)	**Case No. 09-12074 (KJC)**
Debtors.	)	**Jointly Administered**

NOTICE OF COMMENCEMENT OF CHAPTER 11 BANKRUPTCY
CASES AND MEETING OF CREDITORS

On **June 16, 2009**, Building Materials Holding Corporation, and its wholly owned subsidiaries, the debtors and debtors in possession in the above-captioned cases (the "***Debtors***"), each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "***Bankruptcy Code***"). The Debtors, their addresses, case numbers and last four digits of their federal tax identification numbers are as follows:

DEBTORS	ADDRESS	CASE NO.	EID No.
Building Materials Holding Corporation	720 Park Blvd. Suite 200 Boise, ID 83712	09-12074	4269
BMC West Corporation	720 Park Blvd. Suite 200 Boise, ID 83712	09-12075	0454
SelectBuild Construction Inc. (f/k/a BMC Construction, Inc.)	720 Park Blvd. Suite 200 Boise, ID 83712	09-12076	1340
SelectBuild Northern California, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12077	7579
Illinois Framing, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12078	4451
C Construction, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12079	8206
TWF Construction, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12080	3334
H.N.R. Framing Systems, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12081	4329
SelectBuild Southern California, Inc. (f/k/a KBI Stucco, Inc.; SelectBuild, L.P., KBI Windows, Inc., SelectBuild Florida LLC, SelectBuild Distribution, Inc., SelectBuild Mid-Atlantic, LLC, SelectBuild Trim, LLC, SelectBuild Mechanical, LLC, A-1 Building Components, LLC)	720 Park Blvd. Suite 200 Boise, ID 83712	09-12082	9378

plan, or in the event these cases are dismissed or converted to another chapter of the Bankruptcy Code. The Debtors will remain in possession of their property and will continue to operate their businesses unless a trustee is appointed.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS. A creditor is anyone to whom any of the Debtors owe money or property. Under the Bankruptcy Code, the Debtors are granted certain protections against creditors. Common examples of prohibited actions by creditors are contacting the Debtors to demand repayment, taking action against the Debtors to collect money owed to creditors or to take property of the Debtors, and starting or continuing foreclosure actions or repossessions. If unauthorized actions are taken by a creditor against the Debtors, the Court may penalize that creditor. A creditor who is considering taking action against the Debtors or the property of the Debtors should review section 362 of the Bankruptcy Code and may wish to seek legal advice. ***The staff of the Clerk's Office is not permitted to give legal advice.***

CLAIMS. Schedules of creditors will be filed pursuant to Bankruptcy Rule 1007. Any creditor holding a scheduled claim, which is not listed as disputed, contingent, or unliquidated as to amount, may, but is not required to, file a proof of claim in these cases. Creditors whose claims are not scheduled or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in these cases or share in any distribution must file a proof of claim. A creditor who desires to rely on the schedules of creditors has the responsibility for determining that its claim is listed accurately. ***Separate notice of the deadlines to file proofs of claim and proofs of claim forms will be provided to the Debtors' known creditors.*** Proofs of claim forms also are available in the clerk's office of any United States Bankruptcy Court and from the Court's website at www.deb.uscourts.gov.

DISCHARGE OF DEBTS. Confirmation of a chapter 11 case may result in a discharge of debts, which may include all or part of your debt. *See* 11 U.S.C. § 1141(d). A discharge means that you may never try to collect the debt from the Debtors, except as provided in the plan.

For the Court: */s/ David D. Bird*
Clerk of the United States Bankruptcy
Court for the District of Delaware

Dated: June 22, 2009

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	**Chapter 11**
BUILDING MATERIALS HOLDING CORPORATION, *et al.*,[1]	)	**Case No. 09-12074 (KJC)**
Debtors.	)	**Jointly Administered**
	)	**Ref. Docket No. 19**

NOTICE OF HEARING TO CONSIDER APPROVAL OF THE DISCLOSURE STATEMENT FOR JOINT PLAN OF REORGANIZATION FOR THE DEBTORS

PLEASE TAKE NOTICE THAT on June 16, 2009, the above-captioned debtors (collectively, the "***Debtors***") filed with the United States Bankruptcy Court for the District of Delaware (the "***Court***") (a) the *Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code* (as it may be amended or modified, the "***Plan***") and (b) the *Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code* (as it may be amended or modified, the "***Disclosure Statement***") pursuant to section 1125 of title 11 of the United States Code (the "***Bankruptcy Code***").

PLEASE TAKE FURTHER NOTICE THAT a hearing (the "***Disclosure Statement Hearing***") will be held before the Honorable Kevin J. Carey, Chief United States Bankruptcy Judge, at the Court, 824 Market Street, 6th Floor, Wilmington, Delaware 19801 on **July 29, 2009 at 10:00 a.m. (prevailing Eastern Time)** to consider the entry of an order, among other things, finding that the Disclosure Statement contains "adequate information" within the meaning of section 1125 of the Bankruptcy Code, approving the Disclosure Statement and establishing procedures for the solicitation and tabulation of votes to accept or reject the Plan. The Disclosure Statement may be amended or modified at or prior to the Disclosure Statement Hearing, and the Disclosure Statement Hearing may be adjourned from time to time without further notice, except for the announcement of the adjourned date(s) at the Disclosure Statement Hearing or any continued hearing(s).

PLEASE TAKE FURTHER NOTICE THAT objections, if any, to the approval of the Disclosure Statement must be in writing and must: (a) state the name and address of the objector or entity proposing a modification to the Disclosure Statement and the amount of its claim or nature of its interest in the Debtors' chapter 11 cases; (b) specify the basis and nature of any objection and set forth the proposed modification to the Disclosure Statement, together with suggested language; (c) be filed with the Clerk's Office, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 together with proof of service, **on or before 4:00 p.m. (prevailing Eastern Time) on July 22, 2009** (the "***Objection Deadline***"); and (d) be served, so as to be actually received on or before the Objection Deadline, upon (i) Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, New York 10166 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, P.O. Box 391, Wilmington, Delaware 19899-0391 (Attn: Sean M. Beach and Robert F. Poppiti, Jr.), counsel for the Debtors; (ii) Arent Fox LLP, 1050 Connecticut Ave, Washington, DC 20036-5339 (Attn: Christopher J. Giaimo and Katie A. Lane), counsel to the official committee of

[1] The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

EXHIBIT 10

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

RAINBOW VISION SANTA FE, LLC,

Plaintiff,

vs. No. D-0101-CV-2007-00010

WEIS BUILDERS, INC.,
PCI CONTRACTORS, INC., and RLA, INC.,

Defendants.

and

WEIS BUILDERS, INC.,

Third-Party Plaintiff,

vs.

HSH NORDBANK AG, et al.,

Third-Party Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served an original and one copy of Weis Builders, Inc.'s First Set of Non-uniform Interrogatories and Request for Admission to BMC West Corporation D/B/A BMC Construction and Weis Builders, Inc.'s First Request for Production of Documents to BMC West Corporation D/B/A BMC Construction, by first-class mail on November __, 2008, to the following address:

BMC West Corporation D/B/A BMC Construction
808 Hensley Lane
Wylie, TX 75098

and emailed to Maureen E. Thomas, Esq. at mthomas@bmhc.com

Respectfully Submitted,

BURCH & CRACCHIOLO, P.A.

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Richard J. Brumbaugh
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Attorneys for Defendants/Third-Party Plaintiffs
Weis Builders, Inc.

We hereby certify that a copy of the foregoing was served via first-class mail on the __ day of November, 2008 to counsel of record:

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TO: Office of the Court Clerk
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County of Santa Fe
P O Box 2268
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FAX NO.: (505) 827-5055

FROM: Dorothy Duran

NO. OF PAGES: 3 *(including this page)*

DATE: November 24, 2008

CLIENT MATTER NO.: 24788-026

RE: *Rainbowvision Santa Fe, LLC v. Weis Builders, Inc.*
D-0101-CV-2007-00010

COMMENTS:

Attached for filing in the above-referenced case is:

Certificate of Service of Weis Builders, Inc.'s First Set of Non-uniform Interrogatories and Request for Admission to BMC West Corporation., and First Request for Production of Documents.

The information contained in this facsimile message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

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CERTIFICATE OF SERVICE

I, Leigh-Anne M. Raport, hereby certify that, on the 11th day of September, 2009, I caused a true and correct copy of the forgoing document to be served upon the attached service list in the manner so indicated.

Leigh-Anne M. Raport (#5055)

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