

**PRIME CONSTRUCTION CONTRACT**

Lump Sum

**OWNER:**

Name: Winston Tower 100 Association, Inc  
Address: 250 174th Street  
C/S/Z: Sunny Isles Beach, FL 33160  
Phone: 305-932-792-5329  
E-Mail: office@winstontowers100.net

Authorized Representative: ("Owner")  
Norman Peselev, as President  
normandia007@msn.com

**CONTRACTOR:**

Name: Nouveau Florida.  
Address: 512 SE 32 nd. Street  
C/S/Z: Fort Lauderdale, Fl. 33316  
Phone: 516-864-3247  
Cell Phone:  
E-Mail:

Authorized Representatives: ("Contractor")  
Robert Speranza Jr. as President  
rsperanzajr@nouveauflorida.com

Florida General Contractor's License #: Expiration Date:

Dedicated Project Manager's Name: \_Lev Solodovnik ("Project Manager")  
Cell Phone: 860-250-7663  
E-Mail: levsolo@gmail.com

**DESIGN PROFESSIONAL**

Name: Lerch Bates Inc.  
Address: Frank Williams  
C/S/Z:  
Phone: 954-809-8985  
Cell Phone:  
E-Mail: Frank.Williams@lerchbates.com

Authorized Representatives: ("Architect")  
Elevator Consulting Group

**PROJECT** (name and address) ELEVATOR MODERNIZATION ("Project")  
Project No. 0100034357

**PLANS AND SPECIFICATIONS:** \_\_ by Lerch Bates Inc

**MONTHLY BILLING DATE** ("Monthly Billing Date")  
By the 25th of the Month projected through Month End

**RETAINED PERCENTAGE** 10% ("Retainage Percentage")

**CONTRACT SUM** \$ 1,630,000 ("Contract Sum")  
Does not include Payment and Performance Bond, with additional value of \$25,458.00

**INITIAL DEPOSIT** \$ 140,000 ("Initial Deposit")

**CONSTRUCTION START DATE** Commencement date as filed with the Town ("Construction Start Date") and when devices are under Nouveau maintenance service

**SUBSTANTIAL COMPLETION DATE** 11002 weeks plus Holidays, Rainy and Hurricanes ("Substantial Completion Date") inclusive of alternates, does not include work by General Contractor

**LIQUIDATED DAMAGES** \$ ~~200000~~ 250.00 NP /calendar day ("Liquidated Damage Amount") give written warning, one week grace period to cure

Full 12-month Warranty ~~PM~~ \$ 34,800 a year or \$2,900 a month (not included in Contract Sum)

Contractor and Owner, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, hereby agree as follows on the date set forth below:

Owner: NP (Initial)

Page - 1 - Contractor: RS (Initial)

**ARTICLE 1 - CONTRACT DOCUMENTS**

1.1 All words in quotes are defined terms and said definition shall be applicable throughout this Agreement.

1.2 The "Contract Documents" for this Contract consist of (a) this Contract and any exhibits and schedules attached hereto and (b) Lerch Bates Inc Bid invitation and specifications. (c) Nouveau Florida Proposal #20703 Letter of Intent and Quotation form Dated September 15, 2021 (d) interim maintenance Proposal #20663.

In the event of any conflict among the Contract Documents, the Documents shall be construed according to the following priorities: First Priority: This Contract and any Exhibit and Schedules, Second Priority: Lerch and Bates

Specifications, Third Priority: Fourth Priority: Nouveau Bid

Proposal and Bid Documents dated September 15, 2021

All listed documents have been made available for examination to the Contractor. Contractor warrants, represents and agrees that it has carefully examined and understands the Contract Documents relevant to the Work; has adequately investigated the nature and conditions of the Project site and locality; has familiarized itself with conditions affecting the difficulty of the Work; and has entered into this Contract based on its own examination, investigation and evaluation and not in reliance upon any opinions or representations of Owner or any third party.

**ARTICLE 2 - WORK**

2.1 The term "Work" means:

(i) the furnishing and performance of all labor, services and materials by Contractor at or for the benefit of the Project which is within the scope of this Contract and the Contract Documents or which can be reasonably inferred from the general scope of this Contract, or the Contract Documents. All Work shall be completed strictly in accordance with the requirements of this Contract and the Contract Documents and all applicable rules, codes, laws, ordinances, orders, and statutes, be they local, state and/or federal. In the event that portions of the Contract Documents, plans, specifications, or rules, codes, or ordinances are inconsistent, the provision imposing the most stringent requirement (e.g., the highest quality, the greatest quantity) shall control; and

(ii) unless specifically excepted in writing, the furnishing by Contractor of all permits, labor, material, equipment, supplies, plant, tools, scaffolding, hoisting, transportation, superintendence, utilities, water, electric, gas, cleaning, parking, waste removal, maintenance of traffic, and inspections for the timely completion for the Project as called for in the Contract Documents; and

(iii) the obligation to furnish, coordinate and supervise competent, timely, adequate, legal, and documented employees, staff, material suppliers, and subcontractors and use its best skill and attention for the proper administration, coordination, supervision and superintendence of the Work.

2.2 Work, and the Contract Sum, shall not include those specific materials, if any, to be provided by Owner as set forth herein in Exhibit "A".

**ARTICLE 3 - CONTRACT PRICE**

3.1 Subject to additions and deductions in writing and signed by both Contractor and Owner, Owner shall pay to Contractor for the proper performance and timely completion of the Work and performance of all duties, obligations and responsibilities of Contractor under this Contract and the Contract Documents, the Contract Sum.

3.2 Subject to additions and deletions pursuant to this Agreement, the total cost of the work and materials is warranted and guaranteed by the Contractor not to exceed the Contract Sum. Costs, expenses, and fees, of any and all kinds, which would cause the Contract Sum to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

3.3 All payments made to Contractor shall be considered trust funds and not comingled with any other funds or projects of Contractor.

3.4 Within ten (10) days after this Agreement is fully executed, Contractor shall submit to Owner for Owner's approval a detailed schedule showing a proper cost breakdown of the Contract Sum according to the various line items, or parts, of the Work, for use only as a basis for verifying Contractor's applications for payment ("Schedule of Values").

**ARTICLE 4 - PROGRESS PAYMENTS**

4.1 Owner shall pay to Contractor the Initial Deposit within ten (10) days of the last party executing this Agreement. Said Initial Deposit shall be held in trust by Contractor and applied only for the benefit of Owner and for the Project. Said Initial Deposit shall be refundable, subject to deductions based upon the actual costs incurred by Contractor at the time of the refund.

4.2 On or before each Monthly Billing Date, Contractor shall submit to Owner, supported by all backup documents, information, and data (including, but not limited to, bills of sale, invoices, daily work tickets, rental equipment charges, applicable insurance, and the like), a progress payment application showing:

- (i) the then current Schedule of Values; and
- (ii) the value of the Work installed ("Completed Work"); and
- (iii) the value of the material and equipment for incorporation in the Work suitably stored and insured at the Project site or other approved location ("Stored Work"), as of such date;
- (iv) the application of the Initial Deposit; and
- (v) less the retainage for this progress payment and the total retainage held to date.

**(vi) For those purposes AIA forms G702 and G703 can be used.**

4.3 Owner shall review each application for payment by Contractor together with such supporting documents as

Owner: NP (Initial)

Page - 2 - Contractor: RS (Initial)

required under Article 6 of this Contract. Owner shall then approve, modify or reject, in whole or in part, such application for payment. Within thirty (30) days after receiving an approved and fully documented and properly supported payment application, Owner shall pay Contractor for same, less retainage, so long as and contingent upon all other conditions of payment being met under Article 6.

#### ARTICLE 5 - FINAL PAYMENT

5.1 A final payment ("Final Payment"), consisting of the unpaid balance of the Contract Sum shall be made within thirty (30) days after the last of the following to occur:

- (a) satisfactory final completion of the Work by Contractor;
- (b) acceptance thereof by the Architect and Owner;
- (c) delivery of all releases, guaranties, warranties, instruction manuals, performance charts, diagrams, as-built drawings and similar items for the benefit of the Owner and Project;
- (d) compliance with all terms and conditions of Article 6; and
- (e) delivery of a general release, waiver of lien and Contractor's Final Affidavit (as required by Fla. Stat. 713), in a form satisfactory to Owner, executed by Contractor running to and in favor of Owner and Architect.

#### ARTICLE 6 - PAYMENT CONDITIONS

6.1 With each and every payment application from Contractor to Owner, Contractor shall furnish such partial or final lien waivers and releases for each and every person and/or entity, including Contractor, which has either (i) sent or could have sent a Notice to Owner to the Owner or (ii) provided any labor and/or materials for the benefit of the Owner and/or Project and/or Contractor. The lien waivers shall be unconditional and be through and including the date of payment by the Owner. This shall apply even if said person or entity did not furnish any labor or materials for said period in the payment application. The forms of release attached as Exhibit "C" shall be used.

6.2 Contractor shall at all times cooperate, in the course of its performance of the Work and of this Contract and of the Contract Documents, with any lending entity or entities providing financing for the Project and shall supply such information and certifications as may reasonably be required, from time to time, in order that Owner can satisfy conditions for lender to make advances upon Owner's construction loan.

6.3 No partial or final payment made under or in connection with this Contract shall be conclusive evidence of the performance of the Work or of this Contract, in whole or in part, and no such payment shall release the Contractor from any of its obligations under this Contract; nor shall entry and/or use by the Owner constitute acceptance of the Work or any part thereof.

6.4 The parties hereto specifically agree that if there exists any incurred or reasonably anticipated costs or expenses related to defective work hereunder or delays or liquidated damages or actual or threatened claims upon Owner related to the Work, this Agreement, the Project or anyone working under Contractor, Owner may withhold from amounts

due or to become due to Contractor (under this Agreement and any and all other agreements between the parties) an amount, interest free, which Owner determines, in its sole and absolute discretion, to be adequate and sufficient to protect Owner and cover any and all such incurred, anticipated, actual or threatened claims, expenses, costs, damages, judgments, awards, verdicts, and attorneys' fees and costs.

6.5 Owner reserves the unilateral right to issue payment via joint check to any subcontractor, sub-subcontractor and supplier of Contractor and deduct said amount from amounts due to Contractor. Contractor shall immediately discharge and satisfy any claim or lien threatened or asserted against the Project or Owner by Contractor's subcontractors or suppliers of any tier.

6.6 No withstanding anything herein to the contrary, Contractor shall be in full compliance with the terms and conditions of all portions of this Agreement to be entitled to partial and final payment.

#### ARTICLE 7 - TIME

7.1 Time is of the essence. Within ten (10) days of executing this Agreement, Contractor shall submit to Owner a written bar chart schedule for the Work, said chart incorporating the start, milestone, substantial and final completion dates as required by this Agreement.

7.2 Contractor shall meet with Owner not less than every two weeks to update Owner verbally and in writing about the progress of the Work. Contractor shall provide Owner with an updated written schedule not less than every month.

7.3 The Contractor shall achieve Substantial Completion of the Work no later than the Substantial Completion Date, subject to adjustments as provided for in the Contract Documents. The actual date of Substantial Completion shall be determined by the Architect, but only after requested by the Contractor. In addition to the foregoing, Contractor shall timely achieve all of the milestones set forth in the attached Exhibit "B". Dates excluded from calculation of substantial and final completion dates shall be determined in accordance with Registered Commencement Date and Exhibit "B".

7.4 Within fifteen (15) calendar days of achieving Substantial Completion, Contractor shall complete any and all punch list work, obtain an unconditional certificate of occupancy for each and every part of the Project, and take any and all other steps to fully and finally complete the Work, including, but not limited to, any and all cleanup, landscaping, and removal of Contractor's men and materials from the Project site.

7.5 The Work shall only be performed during the dates and times as allowed and permitted by the local/municipal rules and regulations governing the jurisdiction where the Project is located and so as not to disturb neighbors.

7.6 Contractor shall commence Work promptly following Owner's orders to do so and shall so conduct the same as not to delay or interfere with Owner or any third parties to this Agreement in any of their operations and shall proceed in such order and sequence as Owner may direct from time to time. Contractor shall accelerate, decelerate, stop, demobilize, and

Owner: NP (Initial)

Page - 3 - Contractor: RS (Initial)

remobilize its men and materials (and the men and materials under its control) to maintain the project schedule, all of which shall be included in the Contract Sum. Owner shall not be responsible for any delay, interference or extra costs or damages with respect to Contractor's Work. Further, Contractor agrees that no claim for damages other than for an extension of time shall be made or asserted against Owner for any reason whatsoever. Contractor shall not be entitled to an increase in the Contract Sum or payment of compensation of any kind from Owner for direct, indirect, consequential, impact, or other costs, expenses, or damages, including, but not limited to, cost of acceleration or inefficiency, arising out of delay, disruption, interference or hindrance from any cause whatsoever. Contractor waives any rights to consequential damages. Contractor shall regularly, not less than once a month, inform Owner in writing and verbally of the status of the Project and the schedule.

#### ARTICLE 8 - EXTENSIONS OF TIME

8.1 If Contractor claims to need an extension in the completion time requirements by reason of any change in the Work, Contractor shall give Owner written notice thereof within seventy-two (72) hours after Contractor's first knowledge of the occurrence of the conditions giving rise to such event. Contractor shall give this written notice before proceeding with the Work. Notwithstanding anything herein to the contrary, under no circumstances shall Contractor be entitled to any extension of time for any delays caused, in whole or in part, by rain, wind, flood, or hurricanes.

#### ARTICLE 9 - LIQUIDATED DAMAGES AND BONUS

9.1 If, for any reason whatsoever, Contractor is unable to achieve Substantial Completion by the Substantial Completion Date, Contractor shall be liable to Owner in an amount equal to the Liquidated Damage Amount times the number of days from the Substantial Completion Date until Substantial Completion is actually achieved.

9.2 If after achieving Substantial Completion, Contractor, for any reason whatsoever, is unable to achieve Final Completion by the Final Completion Date, as amended by this Agreement, Contractor shall be liable to Owner in an amount equal to one half the Liquidated Damage Amount times the number of days from the Final Completion Date until Final Completion is actually achieved.

9.3 If, for any reason whatsoever, Contractor is unable to achieve a Milestone Date, then Contractor, at its own expense, shall expedite and accelerate the Work in order to meet the next Milestone Date. If, for any reason whatsoever, Contractor is unable to achieve the next consecutive Milestone Date, Owner may, without any need for an opportunity to cure, terminate this Agreement for cause. This provision shall control over Article 20.

9.4 If Contractor is able to achieve Final Completion of the Project and if Contractor submits to Owner any and all required information and documents as called for in the Final Payment Article herein, then Owner shall pay to Contractor with the Final Payment as called for herein, an additional amount equal to the Bonus Amount times the number of days between the contractual date of Final Completion and the later of (i) the actual date of Final Completion or (ii) the date Contractor submits to Owner each and every document and

item of information called for in the Final Payment Article hereinabove.

#### ARTICLE 10 - CHANGE ORDERS

10.1 Owner reserves the right under this paragraph to require Contractor to make written changes in the Work, including additions thereto and deletions therefrom, without invalidating this Contract ("Change Order"). Contractor shall thereupon perform the changed Work in accordance with the terms of this Contract, Contract Documents and the Change Order.

10.2 Where a Change Order is issued, the Contract Sum shall be adjusted as follows: A deduction/credit in favor of Owner of 100% of the applicable Contract Sum for any and all deleted and/or descope work, materials, labor, and/or Work (if any), plus the actual cost of the work and materials plus a markup of no more than a combined 20% for overhead and profit for the new and/or different work, materials, labor and/or Work called for in the Change Order (if any). Contractor shall ensure to Owner and prevent subcontractors and suppliers from charging in excess of 20% combined for overhead and profit on any change orders.

10.3 Contractor shall promptly and carefully review this Agreement, the scope of work and related plans and Exhibits and Project and notify Owner in writing of any discrepancies or conflicts before performing any work, and Contractor shall be responsible for any extra costs resulting from its failure to do so. Contractor shall not be entitled to receive any extra compensation of any kind whatsoever, for extra or additional work of any kind, regardless of whether the same was ordered by Owner or any of its representatives, unless such extra order is given in writing and signed by the authorized representative of Owner. Contractor shall and hereby does waive any claim for extra compensation in the absence of such signed writing.

10.4 If Owner and Contractor are unable to come to an agreement on the scope, time or amount of a Change Order, Contractor agrees to comply with Owner's direction as ordered by Owner, maintain detailed and segregated records as to said changed work and materials, and commence the dispute resolution process called for herein, but in no event shall Contractor be permitted to stop or refuse to perform work. At the request of Owner, Contractor shall furnish to Owner all information, calculations, documents, payments, costs, and backup related to all proposed changes and Change Orders.

#### ARTICLE 11 - INSURANCE

11.1 Contractor shall, before proceeding with any Work Order, throughout the duration of the Agreement and during the applicable statute of repose, procure and maintain commercial general liability (CGL) and workers' compensation insurance from an insurance company licensed in the State of Florida having an AM Best rating of not less than "A". The CGL insurance shall include, but shall not be limited to, premises/operations, employees as insureds, explosion, collapse and underground (XCU), broad form contractual (including personal injury), products/completed operations, independent contractors, broad form property damage and personal injury.

Owner: NP (Initial)

Page - 4 - Contractor: RS (Initial)

11.2 Policy limits shall be as follows: (1) General Aggregate - Per Project of \$2,000,000, (2) Products and Completed Operations Aggregate of \$2,000,000, (3) Each Occurrence of \$1,000,000, (4) Personal/Advertising Injury of \$1,000,000, ~~(5) Fire Damage of \$1,000,000,~~ (6) Medical Payments of \$10,000, (7) Comprehensive Auto Liability on occurrence basis covering all Owned, Non-Owned and Hired Vehicles for limits of liability equal to \$1,000,000 Combined Single Limit, (8) Workers' Compensation including Occupations Disease insurance meeting the statutory requirements of the State in which work is to be performed together with a Broad Form All States Endorsement and containing Employer's Liability insurance in an amount of at least \$500,000 Each Accident / \$500,000 Disease - Policy Limit / \$500,000 Disease - Each Employee and Workers Compensation shall waive the rights of subrogation in favor of all additional insureds, and (9) Excess Umbrella Liability with coverage at least as broad as the underlying policies with per occurrence and aggregate limits of \$1,000,000. If Workers' Compensation coverage is provided by employee leasing, subcontractor must also have a Minimum Premium Workers' Compensation Policy. Contractor may

11.3 Contractor shall cause Owner to be listed as additional insured on said policies which shall be primary without right of contribution and have said insurers waive any rights of subrogation as to Owner. The only acceptable form of additional insured endorsement shall be CG2010 11/85. A certificate of insurance form must be provided to Owner prior to the commencement of any work and must state coverage will not be altered, cancelled or allowed to expire without thirty (30) days written notice by certified mail to Owner.

11.4 If any of the above coverages are subject to or are in excess of any deductibles or self-retention, these amounts must be stated on the certificate, and said deductibles and self-retention will be the sole responsibility of Contractor.

~~11.5 It is understood and agreed that the insurance coverage and limits, required above, shall not limit the extent of Contractor's responsibilities and liabilities specified within this Agreement or by law. It is understood and agreed that authorization is hereby granted to refuse entry to the Project and to withhold payments to Contractor until a properly executed Certificate of Insurance and additional insured endorsement is received by Owner. Should Contractor fail or neglect to provide or maintain the required insurance, Owner shall have the right, but not the duty, to provide such insurance and deduct from any money that may be due or become due to Contractor for any and all premium or costs Owner incur. Equivalent insurance coverage must be obtained from each subcontractor and supplier before permitting them on the site of the Project.~~

11.6 Notwithstanding the foregoing, including all Owner Supplied Materials once delivered to the Project, Contractor agrees in connection with its work hereunder to maintain and protect the Work adequately and properly by lights, barriers, supports and guards and any and all such means necessary. Contractor further agrees to protect all structures, fixtures, furniture, equipment, streets, utilities, landscaping, sidewalks, materials, and work and materials of others, and Owner, including, without limitation, all Owner Supplied Materials once delivered to the Project. Damage caused by Contractor to same shall be corrected at no cost to Owner. Contractor herein expressly assumes all risk of loss of Contractor's and its subcontractor's work, materials, labor, tools, equipment, supplies, facilities, offices, and other property at or off the

Project site. Contractor agrees not to look to Owner for any loss or damage to such items, however caused. Contractor shall maintain products-completed operations insurance through the longer of the applicable Florida statute of limitations or repose period for construction defects.

11.7 Contractor shall furnish Owner a performance and payment bond, and said bond forms ~~shall be unconditional and,~~ on a form acceptable to Owner and in compliance with Florida Statutes §713.23 and §255.05. Contractor is responsible for obtaining the bond within 14 days of execution of this Contract. Contractor is responsible for the costs of procuring the bond

## ARTICLE 12 - INDEMNITY

12.1 Contractor further agrees to conduct and carry on its work in such manner as to avoid injury or damages to persons or property including its own work and any and all third parties working, and visiting the Project and Contractor assumes the entire responsibility and liability for and agrees to indemnify, defend and hold Owner harmless from any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons whether employees of Contractor or otherwise, and to all property (including loss of use thereof) caused by, resulting from, arising out of or occurring in connection with Contractor's execution of Contractor's Work hereunder and all damage, direct or indirect, of whatsoever nature resulting from the performance or lack of performance of Contractor's Work hereunder. Further, to the fullest extent permitted by law, Contractor shall indemnify—~~defend~~ and hold harmless Owner and their respective officers, directors, agents and employees (collectively "Indemnified Parties"), from any claim, loss, damages, liability and costs, including but not limited to reasonable attorney's fees, caused in whole or in part by any act, omission or default of Contractor or any of Contractor's subcontractors, sub-subcontractors, materialmen or agents, or any tier of their respective employees arising from this Agreement or its performance. Nothing herein shall require Contractor to indemnify Owner for Owner's own negligence. The provisions of this article shall survive any termination of this Agreement.

## ARTICLE 13 - ASSIGNMENT

13.1 Contractor shall not assign this Contract, or any monies due or to become due hereunder, or contract any substantial part of the Work, without the prior written consent of Owner. Nothing herein shall prevent Contractor from engaging subcontractors to perform a portion of the Work hereunder. However, Contractor shall be and remain as fully responsible for all persons, directly or indirectly, employed by such subcontractors as Contractor is for its own acts and omissions and those of its agents, servants and employees.

13.2 Contractor shall ensure that all purchase orders, agreements and subcontracts it enters into related to this Project shall specifically permit the Owner the right, but not the obligation, to accept via assignment said purchase orders, agreements and subcontracts upon a termination by Owner of Contractor.

## ARTICLE 14 - COMPLIANCE; SHOP DRAWINGS

14.1 By executing this Contract, Contractor represents and warrants to Owner that it and the Work, during construction and when completed, will comply fully with all applicable

Owner: NP (Initial)

Page - 5 - Contractor: RJ (Initial)

building and safety codes, regulations and construction requirements imposed or enforced by any and all governmental agencies.

14.2 Notwithstanding the dimensions on any plans, specifications or other documents or Contract Documents, it shall be the obligation and responsibility of Contractor to take such measurements as will insure the proper matching and fitting of the work and materials covered by this Agreement with contiguous work. Contractor shall submit such shop drawings and samples as may be necessary to describe completely the details and construction of the work. Approval of such shop drawings by Owner or the architect shall not relieve Contractor of its obligation to perform the work in strict accordance with this Agreement, nor of its responsibility for the proper matching and fitting of the work with contiguous work and the coordination of the work with other work being performed. Contractor's submission of a shop drawing shall constitute the Contractor's representation, upon which Owner may rely, that the Contractor has reviewed the submission for accuracy and compliance with the Agreement, plans and specifications and that wherever engineering is required to be performed, same has been performed by a qualified and licensed engineer. Furthermore, the review of the shop drawing by Owner or its agents or architect shall not constitute an undertaking by Owner or its agents to identify deficiencies in the submission.

14.3 Should the proper and accurate performance of the work hereunder depend upon the proper and accurate performance of other work not to be performed by Contractor under this Agreement, Contractor shall carefully examine such other work, determine whether it is in fit, ready and suitable condition for the proper and accurate performance of the work required under this Agreement, use all means necessary to discover any defects in such other work, and before proceeding with the work in this Agreement, report promptly any such improper conditions and defects to Owner in writing and allow a reasonable time to have such improper conditions and defects remedied. Contractor's failure to do so shall constitute Contractor's acceptance of such conditions.

#### ARTICLE 15 - SAFETY

15.1 Contractor agrees that the prevention of accidents to workers engaged upon or in the vicinity of the Work is its responsibility. Contractor has the sole responsibility for maintaining the safety and loss prevention programs covering all Work performed by Contractor and its subcontractors.

15.2 Contractor shall continuously protect the Work, other work, and the property of Contractor and Owner and others from weather, damage, injury, or loss arising in connection with Contractor's performance of the Work. Owner shall not be responsible for any loss or damage to the Work or the property of Contractor or his employees or subcontractors, however caused.

15.3 Contractor shall prohibit the use or possession of smoking tobacco, chewing tobacco, alcoholic beverages, illegal drugs, controlled substances, and firearms by any person at the Project site. Contractor shall prevent access to the Project site of any person violating such prohibition.

#### ARTICLE 16 - QUALITY

16.1 Contractor shall at all times provide first quality, new materials (unless otherwise specified in the Contract Documents) and workmanship conforming to this Contract and the Contract Documents requirements and be in accordance with the best standards of the construction industry where the Project is located and shall be obligated, at its cost, to remedy any deficiency therein.

#### ARTICLE 17 - GUARANTEES AND WARRANTIES

17.1 Contractor shall be fully responsible for (1) any defective or improper work or materials, (2) any damages caused thereby, and (3) the repair or replacement of such work, materials or damages to adjacent areas, which repair or replacement shall be satisfactory to Owner. Contractor shall warrant its Work for the longer of the following: (a) as required by this Agreement, (b) as required by Florida Law, or (c) one (1) year from issuance of a final (not temporary) certificate of occupancy of the entire scope of Work called for in this Agreement. Contractor shall fully warrant its work and materials irrespective of the status of payment or if Contractor was terminated. Notwithstanding the foregoing, any and all labor and materials that provide for a longer warranty duration shall be assigned and transferred over to Owner.

17.2 Contractor shall, promptly upon receipt of written notice thereof (not exceeding 3 calendar days), make good any defects in materials, equipment and workmanship to its Work which may develop within periods for which said materials, equipment and workmanship are guaranteed, and also make good any damage to other work caused by the repairing of such defects at its own expense, and without reimbursement under the Contract.

#### ARTICLE 18 - PERFORMANCE; SUBCONTRACTORS

18.1 Contractor shall promptly and carefully review this Contract and Contract Documents and Project and notify Owner and Architect in writing of any discrepancies or conflicts before performing any Work, and Contractor shall be responsible for any extra costs resulting from its failure to do so.

18.2 The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and this Contract and the Contract Documents and shall not unreasonably encumber the Project site with materials and equipment.

18.3 Owner shall have the unilateral right to review and approve or reject all purchase orders, agreements and subcontracts which Contractor may enter into prior to entering into same. Contractor shall provide Owner said purchase orders, agreements and subcontracts at least 7 days prior to entering into same.

#### ARTICLE 19 - DEFAULT BY OWNER

19.1 So long as Contractor is not otherwise in default, should Owner at any time:

(a) fail to timely tender payment for the Work as called for in the Contract Documents; and/or

Owner: NP (Initial)

Page - 6 - Contractor: RS (Initial)

(b) fail to timely make Owner Supplied Materials available on the Project site on the date agreed to in writing by the parties; and/or

(c) fail to make the Project site reasonably available to Contractor within the construction contract Time period;

then in any such event, Owner shall be in default and Contractor shall provide Owner with ninety-six (96) hours written notice within which to cure; the failure of the Owner to timely initiate such cure shall entitle Contractor the right to exercise any one or more of the following remedies:

(i) slow and/or stop the Work (with a commensurate and reasonable Contract Sum and Time extension/adjustment) without terminating the Contract until such time as the remedy is provided by the Owner; and/or

(ii) terminate the Contract upon a second ninety-six (96) hour written notice (at any time following the expiration of the initial ninety-six (96) hours notice and curative period).

19.2 Notwithstanding anything herein to the contrary, each and every default and notice to Owner shall be separate and distinct such that each and every default shall require its own notice and opportunity to cure. Once cured, to the extent that a future default occurs, a new notice and opportunity to cure must be provided prior to termination. However, to the extent that Owner consistently requires notices and opportunity to cure (defined as six or more for separate and distinct defaults or three or more for the same default), Contractor may terminate the Contract via notice without further opportunity to cure.

**ARTICLE 20 – DEFAULT BY CONTRACTOR**

20.1 Should Contractor at any time:

(a) fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of required quality to perform the Work with the skill, conformity, promptness and diligence required hereunder; or

(b) cause interference, stoppage, or delay to the Project or an activity necessary to complete the Project; or

(c) fail to properly and promptly make payment for all labor, materials and services provided in the performance of the Work; or

(d) fail to promptly and timely prosecute the Work including, without limitation, achieving Milestones; or

(f) fail in the performance or observance of any of the covenants, conditions, or other terms of this Contract;

then in any such event, each of which shall constitute a default hereunder by Contractor, Owner shall, in addition to any other rights or remedies otherwise provided by this Contract and the other Contract Documents or by law, after giving Contractor written notice of default and ninety-six (96) hours within which to cure said default, have the right to exercise any one or more of the following remedies:

(i) require that Contractor utilize, at its own expense, overtime labor (including Saturday and Sunday Work) and additional

shifts as necessary to overcome the consequences of any delay attributable to Contractor's default; and/or

(ii) attempt to remedy the default by whatever means Owner may deem necessary or appropriate, including, but not limited to, correcting, furnishing, performing, or otherwise completing the Work, or any part thereof, by itself or through others and deducting the cost thereof (plus an allowance for administrative burden equal to twenty five percent (25%) of such costs) from any monies due or to become due to Contractor hereunder; and/or

(iii) terminate the Contractor via written notice (at any time following the expiration of the initial ninety-six (96) hours notice and curative period), without thereby waiving or releasing any rights or remedies against Contractor, and by itself or through others take possession of the Work; and/or

(iv) recover from Contractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential, and all reasonable attorneys' fees suffered or incurred by Owner by reason of or as a result of Contractor's default.

20.2 Notwithstanding anything herein to the contrary, each and every default and notice to Contractor shall be separate and distinct such that each and every default shall require its own notice and opportunity to cure. Once cured, to the extent that a future default occurs, a new notice and opportunity to cure must be provided prior to termination for cause. However, to the extent that Contractor consistently requires notices and opportunities to cure (defined as six or more for separate and distinct defaults or three or more for the same default), Owner may terminate the Contractor for cause via notice without an opportunity to cure.

20.3 In case of termination of Contractor, the Contractor shall not be entitled to receive any further payment under this Contract. After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work by Owner and full payment therefore by Owner to the replacement contractor or others, Owner shall pay Contractor the undisbursed balance of the Contract Sum, if any. If the cost of completion of the Work, plus the allowance for administrative burden, together with any other damages or losses sustained or incurred by Owner, shall exceed the undisbursed balance of the Contract Sum, Contractor shall pay the difference within fifteen (15) days of written demand from Owner.

**ARTICLE 21 - DISPUTES**

21.1 If a dispute should arise between Owner and Contractor under or relating to the Work or the Contract, or the breach thereof, then either party may seek redress of its grievances as to such disputes at law or in equity in a court of competent jurisdiction located in Miami-Dade County, Florida.

21.2 This Contract shall be governed and construed under the laws of the State of Florida. Each of the parties hereto consents to the jurisdiction and the venue of any such action in Miami-Dade County for all purposes in connection with this Contract. **THE PARTIES HEREBY SPECIFICALLY AND IRREVOCABLY WAIVE ANY RIGHT THAT THEY MAY HAVE TO DEMAND A TRIAL BEFORE JURY IN ANY SUCH ACTION.** The prevailing party in any such suit shall be entitled to recover from the other party any and all costs and expenses,

Owner: NP (Initial)

Page - 7 - Contractor: RS (Initial)

including but not limited to reasonable attorney's fees and costs, incurred in having to enforce its rights hereunder, with or without suit.

21.3 The existence of a dispute shall not be grounds for any failure to perform by Contractor nor limit the right of Owner to proceed to remedy any default by Contractor.

21.4 The failure of Owner to insist upon strict compliance with any of the provisions of this Agreement, or to exercise any options provided for herein, shall not be construed to be a waiver or relinquishment of Owner's right to thereafter require the compliance with any such provision of this Agreement or a waiver of the right of Owner to thereafter exercise such option but such provision or option shall remain in full force and effect.

#### ARTICLE 22 - EARLY TERMINATION

22.1 In its sole discretion, Owner may, at any time prior to Substantial Completion, terminate this Contract for its convenience for any reason whatsoever, or for no reason, upon the giving of written notice to Contractor. In no event shall Contractor be entitled to consequential damages or loss of profits on portions of the Work not yet performed or Bonus. If terminated for convenience, Contractor shall be entitled to be paid its actual cost of the Work, labor and materials at the point of termination, plus a combined 10% for overhead and profit. Payment shall be made in accordance with and subject to the requirements of Article 5.

22.2 Without limitation, the following obligations, among others, of Contractor shall survive the termination of the Contract: warranties and guarantees of Work performed; indemnity; payment of taxes, damages, losses and expenses; certifications; delivery of manuals, data on electronic media and as-built drawings; correction of Work performed; removal of liens; and cooperation with the construction lender.

#### ARTICLE 23 - MISCELLANEOUS

23.1 In the event that any term, provision, or part of the Contract is held to be illegal, invalid or unenforceable, such term, provision, or part shall be deemed severed from the Contract and the remaining terms, provisions and parts shall remain unaffected thereby. Where the context requires, neutral terms used herein shall include the masculine and feminine, and singular terms shall include the plural, and vice versa.

23.2 This Contract, including the documents incorporated herein by reference, embodies the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings relating to the subject matter hereof, same being merged herein.

23.3 No requirement of this Contract may be waived or modified except by written document signed by at least one Authorized Representative of each party.

23.4 The captions of the articles in this Contract are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of any article or paragraph herein. All reference to days shall mean calendar days unless otherwise specified.

23.5 All notices called for in this Agreement shall be in writing and addressed Authorized Representatives set forth in this Agreement.

Owner: MP (Initial)

Page - 8 - Contractor: RS (Initial)



IN WITNESS WHEREOF, the parties have duly executed this Contract as of the date first above written.

OWNER: WT100 Association Inc.

Contractor: Nouveau Florida

Date: 12/07/2021

Date: 12/08/2021

Sign: [Signature]

Sign: [Signature]

Print: ALANON PASELEN

Print: Robert Speranza

Title: PRESIDENT

Title: Managing Partner

Board Member

Date DEC 8, 2021

Sign [Signature]

Print CARYN EVE SUTHER

Title VICEPRESIDENT

Owner: NP (Initial)

Page - 9 - Contractor: RS (Initial)