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FILED
ALAMEDA COUNTY

JUN 29 2018

CLERK OF THE SUPERIOR COURT
By Sue Perkins
Deputy

ALAMEDA COUNTY SUPERIOR COURT, HAYWARD HALL OF JUSTICE
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

AHERN RENTALS, INC., a corporation,

Plaintiff,

vs.

DANIEL LEE HARRISON, an individual, dba
Harrison Construction; KAISER
FOUNDATION HOSPITALS, a California
nonprofit corporation; AMERESCO, INC., a
Delaware corporation; ORION CARPORT
SYSTEMS & CONSTRUCTION, INC., a
California corporation; UNITED STATES
FIRE INSURANCE COMPANY, a Delaware
corporation; and DOES 1 to 100, inclusive,

Defendants.

CASE NO. **RG18911159**
UNLIMITED CIVIL ACTION

COMPLAINT FOR DAMAGES

1. BREACH OF CONTRACT
2. OPEN BOOK ACCOUNT
3. ACCOUNT STATED
4. QUANTUM VALEBANT
5. FORECLOSURE OF MECHANIC'S LIEN
6. ENFORCEMENT OF STOP NOTICE
7. ENFORCEMENT OF PAYMENT BOND

Plaintiff alleges:

GENERAL ALLEGATIONS

1. Plaintiff is now, and was at all of the times hereinafter stated, a corporation duly organized and authorized to transact business in the State of California, with its principal place of business in this state at Bloomington, San Bernardino County, California. Plaintiff is in the construction equipment rental business and maintains various rental yards throughout California,

1 including rental yards in San Leandro, Benecia, Fresno, Pacoima and Sacramento, California
2 from which rental yards the equipment rentals that serve as the bases of this complaint were
3 made.

4 2. Plaintiff is informed and believes and thereon alleges that at all times herein
5 mentioned defendant DANIEL LEE HARRISON (hereafter "HARRISON") is and was a
6 resident of Laguna Niguel, Orange County, California, and is and was transacting business under
7 the fictitious business name of Harrison Construction at Laguna Niguel, California. Plaintiff is
8 further informed and believes and thereon alleges that defendant HARRISON is now, and was at
9 all of the times hereinafter mentioned, a contractor and builder, duly licensed as such under the
10 laws of the State of California.

11 3. Plaintiff is unaware of the true names, capacities or basis for liability of defendants
12 DOE 1 through 100, inclusive, and has therefore sued them by the foregoing names which are
13 fictitious, and is informed and believes and thereon alleges that each of said defendants claims an
14 interest in the property and/or construction project hereinafter described and which is the subject
15 of this action. Plaintiff will amend this complaint to allege their true names, capacities, or basis
16 for liability when the same have been ascertain.

17 4. Plaintiff is further informed and believes and thereon alleges that defendants DOE 1
18 through 100, inclusive, and each of them, are in some manner liable to plaintiff, or claim some
19 right, title, or interest in the subject property that is junior and inferior to that of plaintiff, or both.

20 5. Plaintiff is further informed and believes and thereon alleges that defendants, and each
21 of them, at all times relevant to this action, each defendant, including those fictitiously named
22 defendants, was the agent, servant, employee, partner, joint venturer, or surety of the other
23 defendants, and was acting within the scope of that agency, employment, partnership, venture, or
24 suretyship with the knowledge and consent or ratification of each of the other defendants in
25 doing the things alleged in this complaint.

26 6. This action has been commenced in this judicial district inasmuch as the construction
27 project that serve as one of the bases of this action and on which plaintiff's claim of lien
28 (mechanic's lien) is recorded is situated within this judicial district.

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FIRST CAUSE OF ACTION

(Breach of Contract as to Defendants HARRISON and DOES 1 to 10)

7. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1 through 6, inclusive, of its General Allegations.

8. On or about July 13, 2017, defendant HARRISON completed, executed and delivered to plaintiff via email a written Credit Application for the purpose of establishing an open account with plaintiff that would permit defendants to lease equipment from plaintiff's various equipment rental yards on a credit basis. The Credit Application sets forth plaintiff's billing procedures as well as the terms and conditions of the account imposed on defendants. No "wet copy" of the Credit Application was ever submitted or returned by defendants to plaintiff and the account for defendants was established by plaintiff based solely upon the email transmittal that was received by plaintiff from defendants, which is plaintiff's standard business practice and a business practice accepted and followed in the equipment rental industry. A true and correct copy of the Credit Application is attached hereto marked as Exhibit "A" (with the Social Security Number of defendant HARRISON as well as his bank account number redacted for security purposes) and is made a part hereof by this reference.

9. Based upon the information set forth in the Credit Applications and the terms and conditions of account stated therein, plaintiff established an open account for defendants, which account permitted defendants to lease construction equipment from plaintiff's rental yards on a credit basis.

10. After the establishment of the aforesaid account and pursuant to the terms of the account, between July 18, 2017 and January 29, 2018, defendants leased numerous pieces of equipment consisting of forklifts, scissorlifts, boom lifts, a backhoe, a skidsteer and an air compressor from plaintiff's rental yards in San Leandro, Benecia, Fresno, Pacoima and Sacramento, California, for use by defendants in connection with various private works of improvement located throughout California.

1 11. In consideration of said equipment rentals, defendants agreed to pay plaintiff the
2 agreed rental price for the use of plaintiff's equipment upon receipt of plaintiff's billing
3 statement.

4 12. The aggregate rental and use value of the equipment that was leased and furnished by
5 plaintiff to defendants for use by defendants in the performance of defendants' services on the
6 various construction projects was the sum of \$63,380.25. Subsequent to the leasing of the
7 aforementioned equipment by defendants, plaintiff has duly transmitted its billings to defendants
8 for payment of the agreed rental cost of the equipment. However, to date defendants have failed
9 and refused, and continue to fail and refuse, to pay the agreed rental charges to plaintiff, or any
10 portion thereof.

11 13. As a result of the default by defendants, there is currently due, owing and unpaid
12 from defendants to plaintiff the principal sum of \$63,380.25 in lawful money of the United
13 States, and the same has not been paid.

14 14. Plaintiff has performed all conditions, covenants and promises under all written
15 agreements with defendants on its part to be performed.

16 15. The terms and conditions of defendants' account with plaintiff provide for the
17 payment of interest on any past due balance at the rate of eighteen percent (18%) per annum. As
18 a further result of the default of defendants on their account with plaintiff, plaintiff is entitled to
19 recover from defendants interest that has accrued on the unpaid rental charges at the rate of 18%
20 per annum until the rental charges have been paid in full.

21 16. The written Credit Application as well as the equipment rental agreements
22 memorializing the rentals of the equipment by defendants from plaintiff contain a provision the
23 effect of which is to grant the recovery of collection costs, including reasonable attorney's fees,
24 to plaintiff in the event litigation is brought to enforce the terms of the agreements. Plaintiff
25 therefore requests that it be awarded its attorney's fees incurred in enforcing the provisions of the
26 agreements, in an amount to be established at the time of trial and/or according to the prevailing
27 attorney's fees schedule promulgated by this court.
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1 24. Plaintiff is further entitled to an award of its attorney's fees in connection with this
2 action to enforce the aforesaid account, pursuant to a written agreement with defendants or as
3 authorized by statute.

4 FOURTH CAUSE OF ACTION

5 (Quantum Valebant as to Defendants HARRISON and DOES 1 to 100)

6 25. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1
7 through 6, inclusive, of its General Allegations.

8 26. Within the past two years, at San Leandro, Benecia, Fresno, Pacoima and
9 Sacramento, California, defendants became indebted to plaintiff for the use and value of
10 construction equipment that was furnished by plaintiff to said defendants, who then and there
11 agreed to pay the sum of \$63,380.25 for the use of the rented equipment.

12 27. Neither the whole nor any part of the above sum has been paid and there is now due,
13 owing and unpaid from defendants to plaintiff the sum of \$63,380.25, with interest thereon at the
14 legal rate, according to proof.

15 FIFTH CAUSE OF ACTION

16 (Foreclosure of Mechanic's Liens as to all Defendants except

17 UNITED STATES FIRE INSURANCE COMPANY)

18 28. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1
19 through 6, inclusive, of its General Allegations, and each and every paragraph and allegation of
20 the First through Fourth Causes of Action.

21 29. Plaintiff is informed and believes and thereon alleges that defendant KAISER
22 FOUNDATION HOSPITALS (hereafter "KAISER") is now and at all times herein mentioned
23 was a nonprofit corporation, duly organized and existing pursuant to the laws of the State of
24 California, maintaining its principal place of business in this state at Oakland, Alameda County,
25 California. Defendant KAISER maintains various medical treatment facilities throughout the
26 State of California, including a facility at 2500 Merced Street, San Leandro, California.

27 30. Plaintiff is informed and believes and thereon alleges that defendant AMERESCO,
28 INC. (hereafter "AMERESCO") is now and at all times herein mentioned was a corporation,

1 duly organized and existing pursuant to the laws of the State of Delaware, and has been
2 authorized to transact business in the State of California. Plaintiff is further informed and
3 believes and thereon alleges that defendant AMERESCO is now, and was at all of the times
4 hereinafter mentioned, a contractor and builder, duly licensed as such under the laws of the State
5 of California.

6 31. Plaintiff is informed and believes and thereon alleges that defendant ORION
7 CARPORT SYSTEMS & CONSTRUCTION, INC. (hereafter "ORION") is now and at all times
8 herein mentioned was a corporation, duly organized and existing pursuant to the laws of the State
9 of California, maintaining its principal place of business in this state at Irvine, Orange County,
10 California. Plaintiff is further informed and believes and thereon alleges that defendant ORION
11 is now, and was at all of the times hereinafter mentioned, a contractor and builder, duly licensed
12 as such under the laws of the State of California.

13 32. Plaintiff is informed and believes and thereon alleges that defendants KAISER
14 and/or DOES 11 through 100, inclusive, were at all of the times in this complaint mentioned, and
15 now are, the owner(s) or reputed owner(s) of that certain real property situated in the City of San
16 Leandro, County of Alameda, State of California, and located at 2500 Merced Street, San
17 Leandro, California, commonly known as the Kaiser Permanente San Leandro Medical Center.

18 33. Plaintiff is informed and believes and thereon alleges that prior to June 8, 2017,
19 defendants KAISER and AMERESCO entered into a written contract whereby defendant
20 AMERESCO agreed to furnish and install for defendant KAISER a solar array system at the
21 Kaiser Permanente San Leandro Medical Center located at 2500 Merced Street, San Leandro,
22 California. The installation of said solar array system will hereafter be referred to as the
23 "Project."

24 34. Within the period of twenty (20) days after plaintiff first furnished equipment to the
25 Project, plaintiff gave to defendants KAISER, the owner or reputed owner of the Project, and to
26 defendant HARRISON, its customer and a subcontractor on the Project, written preliminary
27 notices as prescribed by and in accordance with the requirements of Section 8200 of the Civil
28 Code of the State of California. Plaintiff did not, however, provide a preliminary notice to

1 defendant AMERESCO, the reputed original contractor on the Project, inasmuch as plaintiff had
2 been provided inaccurate and incomplete information by defendant HARRISON as to the
3 identity of the actual original contractor on the Project. Instead plaintiff had served a preliminary
4 notice on another entity who was not in fact the original contractor of the Project and did not
5 discover this mistake until after plaintiff had recorded its claim of lien (mechanic's lien) on the
6 Project, as hereinafter alleged.

7 35. Plaintiff is informed and believes and thereon alleges that subsequent to the entry of
8 the written contract between defendants KAISER and AMERESCO as aforesaid, defendant
9 AMERESCO entered into a written contract with defendant ORION for the installation of the
10 solar array at the Project, and in turn, defendant ORION then entered into a written contract with
11 defendant HARRISON for the performance of a portion of the services that were to be
12 performed by defendant ORION on the Project.

13 36. Plaintiff is informed and believes and thereon alleges that no notice of completion
14 and/or any cessation of labor thereon was ever filed in the office of the County Recorder of the
15 County of Alameda, State of California, and that ninety (90) days had not elapsed or expired
16 since the completion of said work or improvement, or any cessation of labor thereon, and the
17 filing of the notice and claim of lien for record by plaintiff.

18 37. Between August 30, 2017 and January 25, 2018, defendant HARRISON leased from
19 plaintiff's rental yards in San Leandro and Benecia, California, forklifts, scissorlifts, boom lifts, a
20 backhoe, a skidsteer and an air compressor, for use by HARRISON on the Project. In
21 consideration of said equipment rentals, HARRISON agreed to pay plaintiff the agreed rental
22 price for the use of plaintiff's equipment upon receipt of plaintiff's billing statement.

23 38. The aggregate rental and use value of the equipment that was leased and furnished by
24 plaintiff to defendant HARRISON for use by HARRISON in the performance of his services on
25 the Project was the sum of \$42,097.75. Subsequent to the leasing of the aforementioned
26 equipment by defendant HARRISON, plaintiff has duly transmitted its billings to HARRISON
27 for payment of the agreed rental cost of the equipment. However, to date HARRISON has failed
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1 and refused, and continue to fail and refuse, to pay the agreed rental charges to plaintiff, or any
2 portion thereof.

3 39. As a result of the default by defendant HARRISON, there is currently due, owing
4 and unpaid from defendant HARRISON to plaintiff the principal sum of \$42,097.75 for
5 equipment that HARRISON rented from plaintiff for use on the Project, and the same has not
6 been paid.

7 40. On the 10th day of April 2018, plaintiff's verified notice and claim of lien was duly
8 recorded as Instrument No. 2018071705 in the Official Records, Alameda County, California
9 with regard to the Project, containing a statement of plaintiff's demand after deducting all just
10 credits and offsets, the names of the owners or reputed owners of said property, the names of the
11 persons or entities to and for whom plaintiff contracted to furnish said equipment, together with a
12 general statement of the kind of equipment furnished by plaintiff, the names of the persons or
13 entities by whom plaintiff was employed and to and for whom plaintiff furnished said
14 equipment, and a description of the property sought to be charged with said lien. Said notice and
15 claim of lien was filed for record under and by virtue of the provisions of Division 4, Part 6,
16 Chapter 4 of the Civil Code of the State of California, as amended. A true and correct copy of
17 said verified notice and claim of lien is attached hereto marked as Exhibit "B" and is made a part
18 hereof by this reference.

19 41. Plaintiff has paid as a necessary charge and expense for verifying, acknowledging
20 and recording said notice and claim of lien the sum of \$300.00, plus the sum of \$435.00 for the
21 filing fee for this complaint, neither of which amounts have been repaid to plaintiff, in whole or
22 in part.

23 42. Plaintiff is informed and believes and thereon alleges that the defendants have or
24 claim to have some estate, lien, right, claim, title or interest in, to or upon the real property
25 encumbered by the notice and claim of lien by plaintiff, which said claims by defendants and all
26 such claims or liens by defendants are subject, subsequent and subordinate to the notice and
27 claim of lien by plaintiff, as aforesaid.

SIXTH CAUSE OF ACTION

(Enforcement of Stop Notice as to as to all Defendants except

UNITED STATES FIRE INSURANCE COMPANY)

43. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1 through 6, inclusive, of its General Allegations and each and every allegation set forth in its First through Fifth Causes of Action.

44. Between August 30, 2017 and January 25, 2018, plaintiff furnished to defendant HARRISON at the special instance and request of HARRISON, forklifts, scissorlifts, boom lifts, a backhoe, a skidsteer and an air compressor, to be used and which were actually used by HARRISON in the construction of the works of improvement located at the Project; said works of improvement were made with the knowledge and pursuant to the authority of defendant KAISER; the reasonable rental and use value of the equipment furnished by plaintiff in connection with the Project, after deducting all just credits and offsets, was and is the sum of \$42,097.75.

45. Thirty (30) days had not elapsed or expired since the recordation of any notice of completion on said works of improvement and/or any cessation of labor thereon, and ninety (90) days had not elapsed or expired since the completion of said works of improvement, or any cessation of labor thereon, and the filing of plaintiff's Stop Payment Notice as hereinafter alleged and mentioned.

46. Plaintiff is informed and believes, and thereon alleges, that defendant KAISER was at all time herein mentioned, and now is, the owner of the subject Project and, on or about April 4, 2018 was holding or controlling funds from which to pay costs due or to become due to the original contractor(s) on the Project in a sum sufficient to discharge the claim of plaintiff.

47. Prior to the expiration of the period within which a claim of lien must be recorded, as prescribed by Sections 8412 and 8414 of the California Civil Code and the statutes in such cases made and provided, plaintiff, on or about April 4, 2018, filed with defendant KAISER its Stop Payment Notice and verified statement under and by virtue of the provisions of Sections 8044, 8502, 8506 and 8522 of the Civil Code of the State of California in connection with the Project.

1 A true and correct copy of said Stop Payment Notice and verified statement and claim of plaintiff
2 is attached hereto marked as Exhibit "C" and is made a part hereof by this reference.

3 48. Plaintiff is informed and believes, and thereon alleges, that at and since the time of
4 the filing and service of said Stop Payment Notice and verified statement and claim of plaintiff,
5 defendant KAISER was holding or controlling funds from which to pay costs due or to become
6 due to defendants AMERESCO, ORION and/or HARRISON, in a sum sufficient to discharge
7 the claim of plaintiff and the reasonable costs of litigation thereunder.

8 49. Plaintiff has paid as a necessary charge and expense for verifying, acknowledging
9 and serving said Stop Payment Notice the sum of \$300.00, which amount has not been repaid to
10 plaintiff, in whole or in part.

11 50. Each and all of the defendants hereinabove named have or claim to have some lien,
12 right, title or interest in or to said construction loan funds or some part thereof, which said claim
13 and claims and all such claims and liens are subject, subsequent and subordinate to the claims of
14 plaintiff as aforesaid.

15 SEVENTH CAUSE OF ACTION

16 (Enforcement of Payment Bond as to Defendants ORION and
17 UNITED STATES FIRE INSURANCE COMPANY)

18 51. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1
19 through 6, inclusive, of its General Allegations, and each and every allegation set forth in its
20 First through Sixth Causes of Action.

21 52. Plaintiff is informed and believes and thereon alleges that defendant UNITED
22 STATES FIRE INSURANCE COMPANY (hereafter "U.S. FIRE") is, and at all times relevant
23 to this action was, a Delaware corporation, duly organized and existing pursuant to law, and is
24 engaged in the business of issuing surety bonds in connection with construction projects.
25 Plaintiff is further informed and believes and thereon alleges that defendant U.S. FIRE is a
26 licensed surety in the State of California on bonds and undertakings.

27 53. Plaintiff is informed and believes and thereon alleges that prior to June 8, 2017,
28 defendant AMERESCO made, executed and entered into a written contract with defendant

1 KAISER whereby defendant AMERESCO agreed to furnish and install a solar array system (i.e.,
2 the Project). Thereafter, on or about June 8, 2017, defendant AMERESCO, as an original
3 contractor on the Project, entered into a written contract with defendant ORION to perform
4 services on the Project.

5 54. Before commencing with the construction of the Project, and in accordance with the
6 terms of the contract between defendant AMERESCO and defendant KAISER, defendants
7 ORION, as principal, and U.S. FIRE, as surety, duly made and executed a certain surety bond
8 (hereafter referred to as the "Payment Bond"), which Payment Bond so given and referring to
9 said contract between defendants AMERESCO and ORION provides that if the above bounden
10 principal, contractor, person, company or corporation, or its subcontractors, fails to pay any of
11 the persons furnishing labor, materials or services, etc., for or about the performance of the work
12 contracted to be done, or for any work or labor done thereon of any kind, then said surety will
13 pay the same in an amount not exceeding the sum specified in the Payment Bond, and will also
14 pay in case suit is brought upon said bond, such reasonable attorney's fees as shall be awarded to
15 the prevailing party in said suit, such attorney's fees to be taxed as costs in said suit, and to be
16 included in the judgment therein rendered, as in said Payment Bond provided. A true and correct
17 copy of said Payment Bond is attached hereto marked as Exhibit "D" and is made a part hereof
18 by this reference.

19 55. Pursuant to the terms and conditions of said Payment Bond, the amount so due to
20 plaintiff for the equipment furnished by plaintiff to defendant HARRISON in connection with
21 the Project is recoverable from defendants ORION, as principal, and U.S. FIRE, as surety, on the
22 Payment Bond.

23 56. On or about April 26, 2018, plaintiff made demand on defendants ORION and U.S.
24 FIRE for the amount due and owing to plaintiff in the sum of \$42,097.75. A true and correct
25 copy of plaintiff's written demand dated April 26, 2018 for payment under the Payment Bond is
26 attached hereto marked as Exhibit "E" and is made a part hereof by this reference.

27 57. Subsequent to the service of plaintiff's Payment Bond claim, defendants ORION and
28 U.S. FIRE have failed and refused, and continue to fail and refuse, to pay the amount demanded

1 (\$42,097.75), or any amount whatsoever, to plaintiff, thereby necessitating the commencement
2 of this action by plaintiff to recover the amount so due to plaintiff under the Payment Bond.

3 58. Pursuant to Section 7.3 of the Payment Bond, defendant U.S. FIRE is required to
4 indemnify plaintiff for the reasonable attorney's fees incurred by plaintiff to recover any sums
5 found to be due and owing to plaintiff. Plaintiff therefore requests such an award of its
6 attorney's fees expended and incurred in prosecuting its claim against the Payment Bond.

7
8 WHEREFORE, plaintiff prays judgment against defendants as follows:

9 1. For the First, Second and Third Causes of Action:

- 10 a. For compensatory damages in the principal amount of \$63,380.25;
11 b. For interest on said damages at the rate of eighteen percent (18%) per annum
12 according to proof; and
13 c. For the recovery of plaintiff's attorney fees, according to proof.

14 2. For the Fourth Cause of Action:

- 15 a. For compensatory damages in the principal amount of \$63,380.25; and
16 b. For interest on said damages at the legal rate, according to proof.

17 3. For the Fifth Cause of Action, as follows:

- 18 a. Adjudging that the rights, claims, ownerships, liens, titles, and demands of
19 defendants in the above-described real property are subordinate to and subject to the lien of
20 plaintiff;
21 b. Adjudging that plaintiff's mechanic's lien claim and claim of lien be
22 foreclosed, and that the usual judgment be made for sale of the property according to law by a
23 commissioner to be appointed by the court; that the proceeds of the sale be applied in payment of
24 the amounts due including interest at the rate of eighteen percent (18%) per annum according to
25 proof, to the date of entry of judgment to plaintiff, that each of the defendants to all persons
26 claiming under any of them, subsequent to the mechanic's lien of plaintiff, whether as lien
27 claimants, judgment creditors, purchasers, encumbrancers, or otherwise, be barred and
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1 foreclosed from all rights, claims, interest or equity of redemption in the property and every part
2 of the property when time for redemption has passed;

3 c. Adjudging that if there is a deficiency of proceeds to satisfy the amounts due to
4 the plaintiff that a judgment for the deficiency be entered against the defendants following
5 proceedings prescribed by law;

6 d. Permitting plaintiff to become a purchaser at the foreclosure sale;

7 e. For compensatory damages in the amount of \$42,097.75; and

8 f. For recovery of the cost incurred by plaintiff in verifying and recording its
9 claim of lien in the sum of \$300.00 and for the filing fee for this complaint in the amount of
10 \$435.00.

11 4. For the Sixth Cause of Action, as follows:

12 a. Ordering and decreeing that the monies withheld by defendant KAISER under
13 and pursuant to the Stop Payment Notice and verified statement and claim of plaintiff herein
14 mentioned, be paid to plaintiff and applied on account of this judgment;

15 b. In the event said construction loan funds have been fully disbursed after
16 receipt of plaintiff's Stop Payment Notice, that judgment be entered against defendant KAISER
17 and in favor of plaintiff for the sum of \$42,097.75, plus interest, attorney's fees and costs; and

18 c. That the interests of all the defendants' in and to said construction loan funds be
19 adjudged and decreed subsequent, subject to and inferior to the claim and lien of plaintiff herein.

20 5. For the Seventh Cause of Action:

21 a. For judgment on the Payment Bond against defendants ORION and U.S. FIRE,
22 jointly and severally, for compensatory damages in the amount of \$42,097.75, together with
23 interest thereon at the legal rate from and after April 26, 2018, plus costs and reasonable
24 attorney's fees.

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1 6. On all counts:

2 a. For costs of suit incurred herein; and

3 b. For such other and further relief as the court may deem proper;

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5 Dated: June 25, 2018.

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7 DAN E. QUALLS, Attorney for
8 Plaintiff

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Courthouse News Service

Courthouse News Service

EXHIBIT A

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CREDIT DEPARTMENT
1401 Mineral Ave
Las Vegas, NV 89106-4342



Toll Free: (800) 589-6797
Phone: (702) 647-8100
Fax: (702) 966-4820
E-mail: CA@ahern.com

CREDIT APPLICATION/APPLICANT AGREEMENT

This Credit Application/Applicant Agreement (the "Application") is between Ahern Rentals, Inc., its affiliates and subsidiaries (collectively "ARI"), and the applicant named on page one hereof ("Applicant"). The Applicant is applying for credit to ARI for the purpose of obtaining rentals, products and/or services from ARI. ARI and its subsidiaries and affiliates are separate, but associated companies. Applicant understands and expressly agrees that the information provided to ARI in this Application is being provided for the purpose of obtaining credit and other terms as herein contained. Applicant further understands that ARI is relying upon the accuracy of this information. Applicant, therefore, represents and warrants that the information provided is true and complete. Applicant further understands and agrees that Applicant has an on-going affirmative duty to notify ARI immediately of any material change in Applicant's financial status and of any change in the information provided herein. Where the word "Applicant" is used herein, it includes the undersigned. THIS APPLICATION MUST BE COMPLETED AND SIGNED IN ITS ENTIRETY. THIS APPLICATION MAY BE TRANSMITTED BY FAX OR OTHER ELECTRONIC MEANS (E.G., PDF). AND ALL SUCH SIGNATURES SHALL BE FULLY BINDING AS IF THEY WERE ORIGINAL SIGNATURES. BOTH SIDES OF THIS APPLICATION MUST BE TRANSMITTED.

Applicant Name (Company Legal Name) DANIEL HARRISON HARRISON CONSTRUCTION		Telephone 714 504 5188		Fax 714 504 5188	
Physical Address 633 W. Route 66 # 309		City Glendora	State CA	Zip 91740	
Billing Address same		City same	State same	Zip same	
Description of Business Solar Racking		Contact DAN	E-Mail Address HARRISON@AHORN.COM		
Annual Sales 300,000.00	In Business Since 1997	Number of Employees 6			
BUSINESS STRUCTURE: <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input checked="" type="checkbox"/>					
If a division or subsidiary, name of Parent Corp: _____ If incorporated, date of incorporation: _____ and state of incorporation: _____					
Licensing Information		Contractors License No. B 625886		State CA	Federal Tax No.
		Bond Co.	Bond No.	SEC Code	D&B No. D&B Rating:
COMPANY PRINCIPAL(S)		Name DANIEL HARRISON	Title owner	% of Ownership 100	Birthdate 10-20-1951
		Home Address 633 W. Route 66 # 309 Glendora	City CA	State CA	Zip 91740
		Name	Title	% of Ownership	Birthdate SSN
Home Address		City	State	Zip	
HAS THE FIRM OR ANY OF ITS PRINCIPALS EVER FILED BANKRUPTCY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> DATE: _____					

THIS APPLICATION COVERS ALL CURRENT AND FUTURE PURCHASES, RENTALS AND SERVICES. BY SIGNING BELOW (OR ACCEPTING ANY MATERIALS, VEHICLES, SERVICES AND/OR EQUIPMENT, EVEN IF THIS APPLICATION OR CONTRACT IS NOT SIGNED, APPLICANT AGREES TO ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT, RENTAL OUT CONTRACT(S), EQUIPMENT SALE INVOICE(S)/ORDER(S), AND/OR WORK ORDER(S)/SERVICE ESTIMATE(S).

AUTHORITY TO CONFIRM INFORMATION AND OBTAIN CREDIT REPORTS

Applicant hereby expressly authorizes ARI to contact any parties listed herein and to verify any information contained in this Application. If any of the information provided herein is believed by ARI to be untrue, Applicant hereby agrees that all of Applicant's obligations to ARI, or held by ARI, shall become immediately due and payable in full to ARI without any notice or demand whatsoever from ARI being required. The Applicant hereby waives any privacy of credit information rights or regulations. The Applicant hereby authorizes ARI to make whatever credit inquiries ARI deems necessary in connection with this Application. The Applicant hereby expressly consents to allow ARI to obtain consumer report(s) or reports, as defined in the Fair Credit Reporting Act, on the Applicant as deemed necessary by ARI, and hereby expressly instructs any consumer reporting agency to provide ARI with a consumer report(s) on the Applicant. The Applicant hereby acknowledges that ARI has a legitimate business need for the consumer report(s) as provided for in the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. ARI intends to use this information to, among other things, evaluate the credit worthiness of the Applicant, whether as a principal in the transaction or as a guarantor, and to evaluate the collectability of any debt owed to ARI by the Applicant in any capacity whatsoever. PLEASE SEE REVERSE SIDE FOR ADDITIONAL TERMS AND IMPORTANT INFORMATION REGARDING ARI'S POLICY ON DISCLOSURE OF NON-PUBLIC PERSONAL INFORMATION.

FOR VALUE RECEIVED AND IN CONSIDERATION FOR ARI EXTENDING CREDIT TO THE APPLICANT, THE INDIVIDUAL EXECUTING THIS APPLICATION BELOW HEREBY AGREES, REPRESENTS AND WARRANTS THAT: (A) SHE IS AUTHORIZED TO DO SO ON BEHALF OF THE APPLICANT; (B) ALL INFORMATION CONTAINED IN THIS APPLICATION IS A TRUE, COMPLETE, AND CORRECT STATEMENT OF THE FINANCIAL CONDITION OF THE APPLICANT; (C) APPLICANT AGREES TO ALL TERMS AND CONDITIONS CONTAINED ON THE REVERSE SIDE OF THIS APPLICATION; AND (D) AN ELECTRONIC (E.G., PDF) OR FACSIMILE COPY OF THIS APPLICATION SHALL BE VALID AS THE ORIGINAL.

Print Applicant Name: **DANIEL HARRISON** Print Authorized Officer's Name: _____ Date: **7-13-17**
Authorized Officer's Signature: **[Signature]** Print Authorized Officer's Title: _____

PERSONAL GUARANTEE

For value received and in consideration for ARI extending credit to the Applicant, the undersigned guarantor (the "Guarantor") hereby individually, personally and unconditionally guarantees to ARI and/or its successor and assigns, the prompt payment and performance of any and all indebtedness, terms, covenants, obligations, and liabilities of Applicant to ARI, as described in this Application, Rental Out Contract(s), Equipment Sale Invoice(s)/Order(s), and/or Work Order(s)/Service Estimate(s) (collectively "Debt"), irrespective of whether such Rental Out Contract(s), Equipment Sale Invoice(s)/Order(s), and/or Work Order(s)/Service Estimate(s) have been fully completed between the parties, now existing or hereafter created or arising. Guarantor further agrees to pay on demand any monies due by Applicant to ARI whenever Applicant fails or refuses to pay ARI. Guarantor hereby waives any notice of non-payment, non-performance or non-observance, or proof of notice or demand, presentment, dishonor, diligence, maturity, acceptance of this Guaranty, extension of any guaranteed indebtedness already or hereafter contracted for by Applicant, any modifications or renewals of any credit agreement evidencing the indebtedness hereby guaranteed, and all setoffs and counterclaims. Guarantor hereby consents to any agreement or arrangement with Applicant, including without limitation, agreements and arrangements for payment, extension, subordination, composition, arrangement, discharge or release of the whole or any part of the indebtedness, and the same shall in no way impair Guarantor's liability hereunder. In the event ARI retains or employs attorneys and/or collection agencies to secure payment of any monies due from Applicant and/or Guarantor, Guarantor agrees to pay any and all costs incurred by ARI in connection therewith, including, but not limited to, attorney's and/or collection fees, costs, and other related expenses, in addition to all other monies not paid by Applicant. This Guaranty is a continuing obligation of the Guarantor and may be revoked for future indebtedness only by notifying ARI in writing, via certified or registered mail.

DANIEL HARRISON **[Signature]** **7-13-17**
Print Name Signature Date

BANK REFERENCES	CHASE		GlenDora		626 9143811	
	Name		Branch Location		Telephone	
TRADE REFERENCES (Open Accounts Only)	Checking Account No.		Savings Account No.			
	Loan Balance \$		Business <input checked="" type="checkbox"/> Personal <input checked="" type="checkbox"/>		Secured By	
	1. Home Depot		Firm Name, Address and Telephone Number		Contact Name	Fax Number/Email Address
	2.		Firm Name, Address and Telephone Number		Contact Name	Fax Number/Email Address
3.		Firm Name, Address and Telephone Number		Contact Name	Fax Number/Email Address	

Any of your employees, agents (apparent or actual), affiliates or related entities will be presumed to have authority to rent equipment on your behalf unless you provide ARI with advance written notice to the contrary.

DISCLOSURE OF NON-PUBLIC PERSONAL INFORMATION

ARE YOU INTENDING TO USE THE EQUIPMENT PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES? Yes ☐ No ☐

IF YES, PLEASE ASK ARI FOR YOUR FREE COPY OF THE IMPORTANT GRAMM-LEACH-BILEY ACT NOTIFICATION WHICH OUTLINES ARI'S POLICY ON THE DISCLOSURE OF NON-PUBLIC PERSONAL INFORMATION.

1. GENERAL TERMS

- Applicant desires to purchase or rent equipment (the "Equipment") from ARI on an open account basis and desires in consideration of the creation of open account to be bound by the terms and conditions as contained in this Credit Application.
- Applicant agrees to provide ARI with current financial statements if requested. Applicant gives its permission to ARI to verify and/or supplement the information stated herein and to make inquiry with the credit references listed on this Application. Applicant further authorizes ARI to obtain credit and financial information concerning the Applicant at any time, before or after credit is extended, from any source, including any financial institution where the Applicant does business and from any credit reporting bureau or agency.
- By completing this Credit Application, ARI is not agreeing to extend credit but is considering whether to allow Applicant to rent, purchase and/or repair Equipment on an open account.
- Should ARI extend credit, then as a material inducement for extending credit, Applicant agrees and warrants that all rentals, purchases and repairs for each Equipment are subject to: (i) the terms and conditions contained in this Application; (ii) the terms and conditions of ARI's Rental Out Contract(s), which are available upon request, including, but not limited to, the representations, warranties, indemnifications, and assumption of risk provisions contained therein; (iii) the terms and conditions of ARI's Equipment Sale Invoice(s)/Order(s), which are available upon request; (iv) the terms and conditions of ARI's Work Order(s)/Service Estimate(s); and (v) any other documentation delivered to Applicant by ARI. Applicant agrees and acknowledges that the terms and conditions of ARI's Rental Out Contract(s), Equipment Sale Invoice(s)/Order(s) and/or Work Order(s)/Service Estimate(s) are hereby incorporated into this Application by reference, and are made a part of this Application as if fully set forth herein, irrespective of whether Applicant receives ARI's Rental Out Contract(s), Equipment Sale Invoice(s)/Order(s) and/or Work Order(s)/Service Estimate(s).
- Notwithstanding anything to the contrary contained herein, Applicant understands and agrees that ARI has no obligation to extend credit to Applicant and that ARI, in its sole and absolute discretion, may terminate the extension of any account accommodations or credit to Applicant at any time for any reason or for no reason whatsoever.
- If, for any reason, it becomes necessary for ARI to repossess the Equipment, Applicant authorizes ARI to repossess the Equipment without further notice or legal process and Applicant agrees that ARI shall not be liable for any claims for damage, loss and/or expense arising out of the repossession of the Equipment.
- If Applicant refuses to pay for repairs/services undertaken by ARI on Applicant-owned Equipment after Applicant's authorization, ARI is entitled to all legal and equitable remedies available at law, including, without limitation, selling, disposing, and charging storage fees for the repaired/serviced Equipment, plus all costs, including, without limitation, all fees and attorneys costs incurred by ARI in enforcing this provision of the Application.
- At the request of ARI, Applicant agrees to promptly provide the following information to ARI: (i) Complete construction project(s) ("project") information whereby Equipment will be utilized (i.e., accurate location/address/legal description of property where project is located, project general contractor name and address, owner name and address of property where project is located, etc.); (ii) Safety, performance and payment bond information for project; and (iii) any other pertinent information concerning the Applicant's project(s).

2. PAYMENT TERMS

- Full payment for all charges is due on (10) days from the date of invoice. All past due accounts are subject to a finance charge calculated by multiplying the amount of the unpaid balance by the rate of two percent (2%) per month, or the highest legal rate permitted by law, whichever is lower.
- If Applicant disputes the Equipment rental, purchase, materials provided, and/or services performed, the charge therefore, and/or the validity or correctness of any transactions Applicant has with ARI, Applicant must notify ARI, in writing, of the dispute, including details thereof, within ten (10) days from date of the invoice(s). If Applicant fails to notify ARI of any dispute within the ten (10) day time period, Applicant shall be deemed to have accepted the transaction as satisfactory and voluntarily waives any such claim.
- "Event of Default" means (a) failure of Applicant to pay any amounts owed to ARI when due, whether arising hereunder or otherwise, and whether now existing or hereafter arising; (b) failure of Applicant to otherwise comply with any of the other terms of this Agreement, Rental Out Contract, Equipment Sale Invoice/Order, and/or Work Order/Service Estimate; (c) death, bankruptcy, receivership, dissolution, or insolvency of Applicant; or (d) ARI determining that the prospect of payment or performance of Applicant's obligations to ARI is impaired. If an Event of Default occurs, ARI may (i) decline to extend further credit hereunder (and Applicant agrees not to make any further credit purchases, leases or rentals); (ii) declare all debts of Applicant to ARI arising hereunder or otherwise to be immediately due and payable without notice or demand of any kind, and (iii) exercise any other rights and remedies of ARI, whether in law or in equity. Applicant shall be liable for all collection costs actually incurred by ARI, including, but not limited to, reasonable attorney's fees and costs.
- Payment must be made to AHERN RENTALS, INC., PO BOX 271390 LAS VEGAS, NEVADA, 89127-1390 or any branch office, prior to the last day of the month in which the account becomes due to avoid finance charges.
- A service charge of up to \$25.00 will be applied to each returned check. Account(s) sixty (60) days past due may be suspended at ARI's discretion.
- Nothing herein shall be construed as an extension or a waiver of any due date of any amounts payable by Applicant, or authorization of payment of charges on an installment basis.

3. MISCELLANEOUS TERMS

- This Application shall be construed and enforced in accordance with the laws of Nevada, including its conflicts of laws provisions. The parties agree that any action related to this Application or subject matter thereof shall be brought and maintained only in the State and/or Federal Courts located in Clark County, Nevada, with the strict exception of foreclosure action(s) of mechanic liens by ARI, which shall be brought and maintained in the Courts of the state where the equipment is rented and/or where the construction project is located. The parties consent to the jurisdiction and venue of such courts and waive any right to object to such jurisdiction and venue.
- Applicant agrees that it will not factor, sell or assign the debt related to the credit granted by ARI under the terms of this Application.
- If any provision of this Application is held to be illegal, invalid, or unenforceable under any present or future law, such provision will be fully severable and this Application shall be construed and enforced as if such provision had never comprised a part of this Application and all other provisions will remain in full force and effect.
- An individual executing this Application on behalf of Applicant represents and warrants that he/she is of legal age and has been vested with authority and power to sign this Application on behalf of the Applicant.
- This Application, and any amendments to this Application, may be executed in counterparts, each of which shall be fully effective and all of which together shall constitute one and the same instrument. The parties agree to accept signatures transmitted by fax or other electronic means (e.g., pdf) as if they were original signatures, and all such signatures shall be fully binding upon the parties.
- With the exception of all representations, warranties, promises to guaranty and any other covenants made by Applicant contained in ARI's Rental Out Contract, Equipment Sale Invoice/Order and/or Work Order/Service Estimate, which are hereby incorporated into this Application by this reference, this Application and all documents delivered in connection herewith supersede all prior discussions and agreements and contain the sole and entire agreement among the parties.

Courthouse News Service

EXHIBIT B

PLEASE COMPLETE THIS INFORMATION.

RECORDING REQUESTED BY.

AND WHEN RECORDED MAIL TO:

DAN E. QUALLS, ESQUIRE

P.O. Box 20103

Riverside, CA 92516

(951) 780-4967



2018071705

04/10/2018 01:13 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 108.00



4 PGS

THIS SPACE FOR RECORDER'S USE ONLY

MECHANIC'S LIEN

(Please fill in document title(s) on this line)

Courthouse News Service

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Additional recording fee applies)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN
TO:

DAN E. QUALLS, ESQ.
P.O. Box 20103
Riverside, CA 92516
(951) 780-4967

MECHANIC'S LIEN
(Claim of Lien)

The undersigned, AHERN RENTALS, INC., a corporation, referred to in this Claim of Lien as the Claimant, claims a mechanic's lien for the services described below, furnished for a work of improvement upon that certain real property located in the City San Leandro, County of Alameda, State of California, and described as follows:

"The Kaiser Permanente San Leandro Medical Center located at 2500 Merced Street, San Leandro, California 94577."

After deducting all just credits and offsets, the sum of \$42,097.75, together with interest thereon at the rate of eighteen percent (18%) per annum from January 25, 2018, is due Claimant for the following services furnished by Claimant: rental of forklifts, backhoe with attachments, boom lifts, scissorlift, skidsteer and air compressor.

The name of the person or company by whom Claimant was employed, or to whom Claimant furnished the services, is Daniel Lee Harrison, doing business as Harrison Construction, 633 W. Route 66 #309, Glendora, CA 91740.

The name and address of the owner or reputed owner of the real property is: Kaiser Foundation Hospitals, One Kaiser Plaza, Oakland, CA 94612-3604.

AHERN RENTALS, INC.

By: 

DAN E. QUALLS, Attorney and
Authorized Agent

**[NOTICE OF MECHANIC'S LIEN AND PROOF OF SERVICE AFFIDAVIT ON
FOLLOWING PAGES]**

NOTICE OF MECHANIC'S LIEN: ATTENTION!

Upon the recording of the enclosed **MECHANIC'S LIEN** with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanic's lien is recorded.

The party identified in the mechanic's lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanic's lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for the unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanic's lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANICS' LIENS GO TO THE CONTRACTORS STATE LICENSE BOARD INTERNET WEBSITE AT www.cslb.ca.gov.

VERIFICATION

I am the Claimant's agent authorized to make this verification on the Claimant's behalf and the foregoing Claim of Lien is true of my own knowledge, except for matters stated in it on my information or belief, and as to those matter I believe it to be true.

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

Dated: April 4, 2018.



DAN E. QUALLS

PROOF OF SERVICE

On April 4, 2018, the undersigned declarant served a copy of the above CLAIM OF LIEN and NOTICE OF MECHANIC'S LIEN on the owner/reputed owner named below by certified mail, return receipt requested, at the addresses shown below:

Kaiser Foundation Hospitals
One Kaiser Plaza
Oakland, CA 94612-3604

Certified #7016 2710 0000 1413 8854
Return Receipt Requested

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

Dated: April 4, 2018.



DAN E. QUALLS

Courthouse News Service

Courthouse News Service

EXHIBIT C

STOP PAYMENT NOTICE

Kaiser Foundation Hospitals
One Kaiser Plaza
Oakland, CA 94612-3604

Certified #7016 2710 0000 1413 8854
Return Receipt Requested

Project: Kaiser Permanente San Leandro Medical Center
2500 Merced Street, San Leandro, California 94577

YOU ARE HEREBY NOTIFIED that the undersigned Claimant, AHERN RENTALS, INC., a corporation, furnished equipment consisting of forklifts, a backhoe with attachments, boom lifts, a scissorlift, a skidsteer and an air compressor to Daniel Lee Harrison, doing business as Harrison Construction ("Harrison Construction"), pursuant to that certain contract made between Kaiser Foundation Hospitals and Orion Construction Corporation for the work of improvement described above.

The original contract price of the aforesaid rental equipment furnished by Claimant on this work of improvement was the sum of \$42,097.75, which sum is and was the reasonable value thereof. Claimant has in fact provided the required and contracted for rental equipment to Harrison Construction on this work of improvement in the sum of \$42,097.75. There has been paid and credited thereon the sum of \$0.00, and there now remains due and owing to Claimant, for and on account thereof, the principal sum of \$42,097.75 in lawful money of the United States, after deducting all just credits and offsets, and the same has not been paid, with interest thereon at the rate of eighteen percent (18%) per annum from January 25, 2018.

The name and address of the owner or reputed owner of the real property is:
Kaiser Foundation Hospitals, One Kaiser Plaza, Oakland, CA 94612-3604.

The name and address of the direct contractor or reputed direct contractor on this project is: Orion Construction Corporation, 2185 La Mirada Drive, Vista, CA 92081.

The name of the person or company by whom Claimant was employed, or to whom Claimant furnished the services, is Daniel Lee Harrison, doing business as Harrison Construction, 633 W. Route 66 #309, Glendora, CA 91740.

You are required to set aside sufficient funds to satisfy this claim with interest.

Dated: April 4, 2018.

AHERN RENTALS, INC.

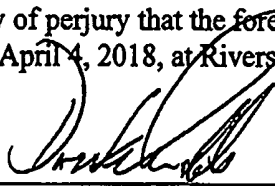
By: 

DAN E. QUALLS, Attorney and
Authorized Agent

VERIFICATION

I, DAN E. QUALLS, declare that I am the Attorney and Authorized Agent for AHERN RENTALS, INC., the claimant named in the foregoing claim, and I am authorized to make this verification for and on behalf of said claimant, and I make this verification for that reason. I have read said claim and know the contents thereof and the same is true and contains among other things, a correct statement of claimant's demands after deducting all just offsets and credits.

I declare under penalty of perjury that the foregoing is true, and that this Verification was executed on April 4, 2018, at Riverside, Riverside County, California.



DAN E. QUALLS

REQUEST FOR NOTICE OF ELECTION (Private Works Only)

If an election is made not to withhold funds pursuant to this stop notice by reason of a payment bond having been recorded in accordance with Sections 8600 or 8522, please send notice of such election and a copy of the bond within thirty (30) days of such election in the enclosed pre-addressed stamped envelope to the address of the agent of the claimant shown above. This information must be provided by you under Civil Code sections 8522(b). (Claimant must attach self-addressed stamped envelope.)

Signed: _____

Dan E. Qualls, as Attorney and
Authorized Agent for Claimant

P.O. Box 20103
Riverside, CA 92516
Telephone: (951) 787-0740

DAN E. QUALLS
Attorney at Law

April 4, 2018

Kaiser Foundation Hospitals
One Kaiser Plaza
Oakland, CA 94612-3604

Certified #7016 2710 0000 1413 8854
Return Receipt Requested

My Client: Ahern Rentals, Inc.
Project: Kaiser Permanente San Leandro Medical Center
2500 Merced Street, San Leandro, California 94577

Greetings:

This office is counsel to Ahern Rentals, Inc. ("Ahern") and in that capacity has been requested to contact you in connection with certain monies that are owed to Ahern on the above-noted project. Ahern has furnished and rented construction equipment to Daniel Lee Harrison, doing business as Harrison Construction ("Harrison Construction"), a subcontractor to Orion Construction Corporation ("Orion"), on this project and has not been paid by Harrison Construction for those equipment rentals. The outstanding rental charges for the use of Ahern's equipment on this construction project by Harrison Construction are the sum of \$42,097.75. As a result of the nonpayment of Ahern's equipment rentals charges by Harrison Construction, enclosed with this letter you will find an original Stop Payment Notice duly verified and executed on behalf of Ahern with regard to the monies that are owed to Ahern on this particular work of improvement. By this Stop Payment Notice you are required to withhold from Orion an amount sufficient to answer the claim of Ahern on this job, with interest at the contracted rate of eighteen percent (18%) per annum.

Ahern is also in the process of recording a Mechanic's Lien (Claim of Lien) against this property, a copy of which is enclosed for your information and records. Ahern's Mechanic's Lien has been processed to the Alameda County Recorder's Office for recordation at this time. It is the intention of Ahern to proceed with an action to enforce its Stop Payment Notice and to foreclose its Mechanic's Lien on this project unless the amount of the Stop Payment Notice/Mechanic's Lien is paid to Ahern through this office by April 25, 2018.

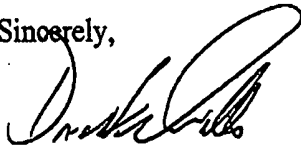
April 4, 2018

Letter to Kaiser Foundation Hospitals
Re: Kaiser Permanente San Leandro Medical Center

Page Two

Should you have any questions regarding these claims, please do not hesitate to contact me at this office.

Sincerely,



DAN E. QUALLS
Enclosures

cc: Harrison Construction
Orion Construction Corporation

Courthouse News Service

Courthouse News Service

EXHIBIT D

Bond No.: 602-115947-1

Premium listed on Performance Bond

AIA Document A312™ – 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

Orion Carport Systems & Construction, Inc.
2917 Vall Avenue
Commerce, CA 90040

SURETY:

(Name, legal status and principal place of business)

United States Fire Insurance Company
305 Madison Avenue
Morristown, NJ 07962

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

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

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

Ameresco, Inc.
60 E. Rio Salado Pkwy, STE 1001
Tempe, AZ 85281

CONSTRUCTION CONTRACT

Date: 06/08/2017

Amount: \$ 644,389.63

Six Hundred Forty-Four Thousand Three Hundred Eighty-Nine and 63/100

Description: Project No. 05302-2020-0007, KP NRG Solar PV Installation at San Leandro Medical Center located at 2500 Merced St., San Leandro, CA 94577

BOND

Date: August 11, 2017

(Not earlier than Construction Contract Date)

Amount: \$ 644,389.63

Six Hundred Forty-Four Thousand Three Hundred Eighty-Nine and 63/100

Modifications to this Bond: ☒ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Orion Carport Systems & Construction, Inc.

Signature: 

Name and Title: AHMET AKMAN, PRESIDENT

(Any additional signatures appear on the last page of this Payment Bond.)

SURETY

Company: (Corporate Seal)

United States Fire Insurance Company

Signature: 

Name and Title: Vanessa Copeland, Attorney-in-Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Pinnacle Surety & Ins. Ser.
151 Kalmus Dr., Ste. A 201
Costa Mesa, CA 92626
(714) 546-5100

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)
N/A

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

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
2. have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

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

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

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

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

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

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

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

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Signature: _____

Name and Title: _____

Name and Title: _____

Address _____

Address _____

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE 1189

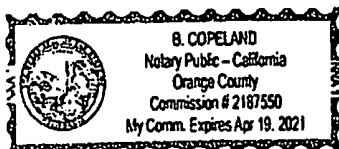
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Orange)

On 8/11/17 before me, B. Copeland, Notary Public,
personally appeared Vanessa Copeland
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: B. Copeland

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent and reattachment of this form to another document.

Description of Attached Document

Type or Title of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Vanessa Copeland

- ☐ Individual
☐ Corporate Officer - Title(s): _____
☐ Partner: ☐ Limited ☐ General
☒ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer - Title(s): _____
☐ Partner: ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

01016407318

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Eric Lowey, Mark Richardson, Shawn Blume, Vanessa Copeland

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties not exceeding: Seven Million, Five Hundred Thousand Dollars (\$7,500,000).

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on January 31, 2018.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

- (a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;
- (b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 10th day of March, 2016.



UNITED STATES FIRE INSURANCE COMPANY

A.R.R.

Anthony R. Slimowicz, Senior Vice President

Slate of New Jersey)
County of Morris)

On this 10th day of March 2016, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

**SONIA SCALA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 3/25/2019**

Sonia Scala

Sonia Scala

(Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 11th day of August 20 17

UNITED STATES FIRE INSURANCE COMPANY



A.L.W.

Al Wright, Senior Vice President

Courthouse News Service

EXHIBIT E

P.O. Box 20103
Riverside, CA 92516
Telephone: (951) 780-4967

DAN E. QUALLS
Attorney at Law

April 26, 2018

United States Fire Insurance Company
305 Madison Avenue
Morristown, NJ 07962

CERTIFIED #7016 2710 0000 1413 8885
RETURN RECEIPT REQUESTED

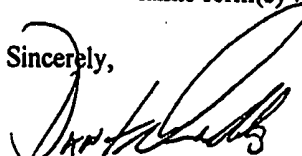
Re: Bond No. 602-115947-1
Principal: Orion Carport Systems & Construction, Inc.
Project: 05302-2020-0007 KP NRG Solar PV Installation
Kaiser Permanente San Leandro Medical Center
2500 Merced Street, San Leandro, California
Claimant: Ahern Rentals, Inc.
Claim Amount: \$42,097.75

Greetings:

This office is counsel to Ahern Rentals, Inc. ("Ahern") and in that capacity has been requested to submit its claim on the above-noted Payment Bond ("Bond") issued by United States Fire Insurance Company, as surety, and Orion Carport Systems & Construction, Inc. ("Orion"), as principal, in connection with the private work of improvement indicated above. Ahern was a provider of construction equipment to Daniel Lee Harrison, doing business as Harrison Construction ("Harrison"), a subcontractor to Orion on this construction project, and has not been paid the agreed price for the rental and use of its equipment by Harrison on this project. In particular, between August 30, 2017 and January 25, 2018, Ahern rented forklifts, boom lifts, a backhoe, a scissorlift, a skidsteer and an air compressor to Harrison, which equipment was used by Harrison in the performance of his services on the project. The agreed and reasonable rental and use value of Ahern's equipment on this project was the sum of \$42,097.75, which amount has been billed by Ahern to Harrison for payment. To date, however, no portion of said sum has been paid and the entire rental charges of \$42,097.75 remain due, owing and unpaid to Ahern at this time.

Accordingly it is the intention of Ahern to submit its claim for payment under the above-noted Payment Bond. Kindly forward to me at this office any and all claim forms necessary to further submit the claim of Ahern for payment on the Payment Bond. If it is more convenient for you to submit the claims form(s) via e-mail, my e-mail address is danqualls9@gmail.com.

Sincerely,



DAN E. QUALLS

cc: Orion Carport Systems & Construction, Inc.

P.O. Box 20103
Riverside, CA 92516
Telephone: (951) 780-4967

DAN E. QUALLS
Attorney at Law

NOTICE TO BONDING COMPANY
(California Civil Code Section 8612)

TO OWNER:

Kaiser Foundation Hospitals
One Kaiser Plaza
Oakland, CA 94612-3604

CERTIFIED #7016 2710 0000 1413 8861
RETURN RECEIPT REQUESTED

TO PRIME OR DIRECT CONTRACTOR:

Ameresco, Inc.
60 E. Rio Salado Parkway, Ste. 1001
Tempe, AZ 85281

CERTIFIED #7016 2710 0000 1413 8878
RETURN RECEIPT REQUESTED

TO BONDING COMPANY:

United States Fire Insurance Company
305 Madison Avenue
Morristown, NJ 07962

CERTIFIED #7016 2710 0000 1413 8885
RETURN RECEIPT REQUESTED

TO BOND PRINCIPAL:

Orion Carport Systems &
Construction, Inc.
2917 Vail Avenue
Commerce, CA 90040

CERTIFIED #7016 2710 0000 1413 8892
RETURN RECEIPT REQUESTED

Re: Bond No. 602-115947-1
Principal: Orion Carport Systems & Construction, Inc.
Project: 05302-2020-0007 KP NRG Solar PV Installation
Kaiser Permanente San Leandro Medical Center
2500 Merced Street, San Leandro, California
Claimant: Ahern Rentals, Inc.
Claim Amount: \$42,097.75

NOTICE IS HEREBY GIVEN AS FOLLOWS:

(1) That a general description with substantial accuracy of the equipment furnished by Claimant Ahern Rentals, Inc. is: furnishing of forklifts, boom lifts, a backhoe, a scissorlift, a skidsteer and an air compressor.

(2) That the name and address of the person to whom the above equipment was furnished is: Daniel Lee Harrison, doing business as Harrison Construction, 633 West Route 66, #309, Glendora, CA 91740.

(3) That the general description, address, and location of the work of improvement are: KP NRG Solar PV Installation at Kaiser Permanente San Leandro Medical Center, 2500 Merced Street, San Leandro, California.

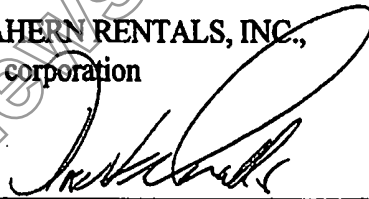
(4) That the name and address of the party who furnished the equipment described above is: Ahern Rentals, Inc., 1401 Mineral Avenue, Las Vegas, NV 89106.

(5) That the relationship of the undersigned party furnishing the equipment to the other parties described above is: equipment lessor.

(6) Amount of claim: \$42,097.75

Date: April 26, 2018

AHERN RENTALS, INC.,
a corporation



By: DAN E. QUALLS, Attorney
and Authorized Agent