Bess Seaby

From: James Scholten [jscholten@wavelandprop.com]
Sent: Friday/13 November/2009 11:04 AM
To: Bess Seaby
Subject: 120 Liberty
Attachments: DOC_20091113115451.PDF

~~4008537~~

Seaby,

Here's the signed contract. Two things-

1. Attachment 'A' contradicts the testing section of the contract by stating the QEI is excluded. I crossed that out and initialed it. As we just discussed, the QEI should be included in the contract.
2. The following should be listed on the insurance policy.
   a. Waveland Property Group, Inc. (Property Manager)
   b. Wheaton Property Partners, LLC (Owner)

   P.O. Box 47169
   Chicago, IL 60647

Thanks-

James Scholten
Property Manager
Waveland Property Group, Inc.
1100 Jorie Blvd. Suite 368
Oak Brook, IL. 60523
Main: 630.472.9800
Direct: 630.230.1220
Fax: 630.472.9801
www.wavelandprop.com

PLEASE MAKE A NOTE OF OUR NEW PHONE AND FAX NUMBERS IN YOUR RECORDS.

EQ # 2026388 89 90

BILL/P 235535 Bill to Pay

LOCATION SHIPTO 10223355

SOLD TO 264162

EXTENDED WARRANTY
FOR
VERTICAL TRANSPORTATION

PURCHASER (Equipment Owner):
Wheaton Property Partners, LLC
PO Box 47169
Chicago, Illinois 60647

SERVICE LOCATION:
Wheaton Property Partners
120 Liberty
Wheaton, Illinois 60187

EQUIPMENT DESCRIPTION

Make	Model	Freight		Passenger		Escalator	Walk	Other
		Traction	Hydraulic	Traction	Hydraulic			
	Microprocessor	1		2				

This extended warranty, dated , by and between Wheaton Property Partners, LLC, (Purchaser) and KONE Inc. (Contractor) is for Warranty Service for the vertical transportation located at Wheaton Property Partners.

KONE and Purchaser, in consideration of the terms, covenants & conditions set forth, hereby agree as follows:

PERFORMANCE

KONE will systematically examine, maintain, adjust and lubricate the equipment. In addition, unless specifically excluded elsewhere, KONE will repair or replace the following if the repair or replacement is, in KONE's judgment, necessitated by normal wear and tear.

PRICE

KONE in consideration of **$2,709.00 (TWO THOUSAND SEVEN HUNDRED NINE AND 00/100 DOLLARS) payable by Purchaser quarterly in advance (equivalent to $903.00/month)**, hereby agrees to furnish services herein described on the equipment within the Extended Warranty.

TRACTION ELEVATORS

MICROPROCESSOR TRACTION ELEVATOR SYSTEM COMPONENTS

CONTROL SYSTEM
Controllers, motor starters, dispatcher and relay panels, contacts, transformers, solid state components, isolation transformers, dynamic braking resistors and armature filters.

KONE First Service technicians will be equipped with necessary field diagnostic and service tools. Microprocessor software examinations will be conducted to ensure dispatching and motion control systems are operating at proper levels.

GEARED/GEARLESS MACHINES
Brushes worms, gears, thrusts, bearings, brake magnet coils, brake shoes, brake linings, deflector sheaves, secondary and other sheaves, bearings and assemblies, rotating elements, pins.

ELECTRICAL
Electrical wiring, conduit, ducts, and traveling cables from the elevator equipment to the machine room mainline disconnect switch, and hoistway outlets.

HOISTWAY AND PIT EQUIPMENT
Landing and slowdown switches, limits, car and counterweight buffers, overspeed governors, governor tension sheave assemblies and car counterweight safeties.

RAILS AND GUIDES
Guide rails, guide shoe gibs and rollers. Guide rails will be properly lubricated, except where roller guides are used.

HOIST ROPES
Hoist ropes will be properly lubricated and adjusted for equalized tension.

DOOR EQUIPMENT
Automatic door operators, hoistway and car door hangers, hoistway and car door contacts, door protective devices, hoistway door interlocks, door gibs and auxiliary door closing devices.

SIGNALS AND ACCESSORIES
Car operating panels, hall push button stations, hall lanterns, emergency lighting, car and hall position indicators, lobby control panels, car operating panels, fireman's service equipment and all other signal and accessory facilities furnished and installed as an integral part of the elevator equipment.

Re-lamping of signal fixtures is included only during KONE's systematic examinations. Service requests related to re-lamping of signal fixtures will be considered billable.

HOUSEKEEPING
Purchaser and KONE have a shared responsibility to clean elevator machine rooms, pit areas, hoistway equipment including rails, interlocks, hoistway door hangers and tracks, relating devices, switches, buffers and car tops.

LUBRICANTS
KONE will use lubricants compounded under OEM's specifications or equal.

HOURS OF SERVICE

All work covered under this Extended Warranty is to be performed during the regular working hours of regular working days of the elevator trade, unless otherwise indicated herein.

KONE SERVICE CENTER

The KONE Service Center is available 24-hours a day, seven days a week to respond to all calls and dispatch a service technician if necessary. In the unlikely event of an entrapment, a highest priority response will be given. If your unit is equipped with remote monitoring capabilities, KONE reserves the right to utilize this functionality and the phone line for the unit to collect data related to the use and operation of your equipment.

SERVICE REQUESTS (CALLBACKS)

This Extended Warranty covers minor adjustment service requests during the regular working hours of regular working days of the elevator trade, unless otherwise indicated herein.

If Purchaser should require, at any time, service requests (unless included above) to be made on overtime, Purchaser will be charged only for the difference between KONE's regular hourly billing rate and KONE's regular overtime billing rate applicable for each overtime hour worked. All work outside the scope of this Extended Warranty is to be performed by KONE at an agreed upon rate.

Service requests are defined as minor adjustments, corrections or emergency entrapments that require immediate attention and are not caused by reasons beyond KONE's control. Service requests do not include work that requires more than one technician or more than two hours to complete.

TESTS

KONE will perform the following tests on the equipment:

TRACTION ELEVATOR
An annual no load test as required by the A.S.M.E. A-17.1 code.

EXCLUSIONS

KONE assumes no responsibility for the following items or services, which are excluded from the Extended Warranty:

ELEVATOR
Refinishing, repairing, replacement or cleaning of car enclosure, gates and/or door panels, door pull straps, hoistway enclosure, rail alignment, hoistway doors, door frames, sills, hoistway gates, finished flooring, power feeders, switches, their wiring and fusing, car light diffusers, ceiling assemblies and attachments, smoke or heat sensors, fireman's phone devices, intercoms, music systems, media displays, card-readers or other security systems, light tubes and bulbs, pit pumps, emergency power generators, hydraulic cylinder, unexposed piping, disposal of or clean-up of waste oil or any contamination caused by leaks in the hydraulic cylinder or unexposed piping. KONE shall not be obligated to perform or keep records of firefighter 19s service testing, unless specifically included in this Extended Warranty.

GENERAL
KONE shall not be obligated to: make safety tests other than those specified herein; install new attachments or equipment adjustments, whether or not recommended or directed by insurance companies or by federal, state, municipal, ASME codes or other governmental or non-governmental authorities; make changes or adjustments required

by new or retroactive code changes; perform tests or correct outstanding violations or deficiency lists cited by code authorities or any third party agency prior to the effective date of this agreement; make renewals or repairs necessitated by fluctuations in the building AC power systems, adverse machine room conditions (including temperature variations below 60 degrees and above 90 degrees Fahrenheit), excessive humidity, adverse environmental conditions, water damage, prior water exposure, rust, fire, explosion, acts of God, misuse, vandalism, theft, war, acts of government, labor disputes, strikes, lockouts or tampering with the elevator equipment by unauthorized personnel; make repairs or renewals for damage or deterioration caused by UV rays; make renewals or repairs necessitated by negligence or misuse of the equipment or any other cause beyond its control except ordinary wear and tear. KONE will maintain the equipment performance and its components to the operating condition at the effective date of this agreement.

Obsolete items are excluded from this agreement. Obsolete items and the labor to replace them will be at the owner's expense. Obsolete items (including, but not limited to, assemblies, parts, components or systems) are defined as follows: An item for which the original design is no longer regularly manufactured by the OEM or the original item has been replaced with an item of different design. No exception to this exclusion will be made for items defined as obsolete above simply because they can be custom made or acquired at any price. Any modifications to existing equipment necessary to accommodate replacement components will also be at the owner's expense. KONE will not be required to furnish reconditioned or used parts.

INDEMNITY CLAUSE

Purchaser shall indemnify, defend and save harmless KONE from and against liabilities, losses and claims of any kind or nature imposed on, incurred by, or asserted against KONE arising out of the concurrent, active or passive negligence of KONE in any way connected with the services provided under this Extended Warranty or the use or operation of the equipment. Purchaser hereby waives any and all rights of recovery, arising as a matter of law or otherwise, which Purchaser might now or hereafter have against KONE.

PURCHASER ASSURANCES

Purchaser agrees to: furnish KONE with a list of authorized personnel responsible for building operations; provide KONE with a complete set of as-built wiring diagrams; to shut down the equipment and notify KONE for repair, in the event that the equipment is not functioning properly; notify KONE in the event of any injury or accident in or about the equipment included in this agreement (verbal notification must be provided immediately and written notification must be provided within seven days); perform the monthly firefighter's service testing and keep record of such tests, if required and not specifically included elsewhere herein; annually maintain the mainline disconnect switch by a certified electrician and repair as necessary; provide safe access to the equipment and machine room areas for service and keep all machine rooms and pit areas free from water, stored materials and debris; remove and dispose of any hazardous materials, water or waste according to applicable laws and regulations; provide a safe workplace for KONE personnel; contact KONE immediately if you are ever less than very satisfied with KONE's performance. Purchaser shall at all times be solely liable for the proper use of the equipment. Purchaser agrees to post any and all instructions and warnings to passengers related to the use of the equipment. Purchaser shall not permit anyone other than KONE to make repairs, additions, modifications, upgrades or adjustments to the equipment covered herein during the term of the agreement.

TERM

The service specified will be furnished from the effective date stated herein, and shall continue for an initial, non-cancelable term of TEN (10) years. This Extended Warranty will automatically renew for successive terms of TEN (10) years thereafter. Either party may terminate this Extended Warranty either at the end of the initial TEN (10) year term or at the end of any subsequent TEN (10) year term by giving the other party ninety (90) days written notice, via certified mail, prior to the expiration date of the Extended Warranty, the expiration date being TEN (10) years from the effective date of this Extended Warranty or TEN (10) years from the effective date of any subsequent renewal term. The parties acknowledge that delayed notice of termination shall constitute a material breach of Extended Warranty and the entire remaining amount of the Extended Warranty will accelerate and become due to KONE as liquidated damages. In the event of the sale, lease or other transfer of the ownership of the equipment described herein, or the premises in which it is located, Purchaser agrees to see that such Purchaser is made aware of this Extended Warranty and assumes and agrees to be bound by the terms hereof for the balance of the Extended Warranty. KONE may, at its sole discretion, temporarily suspend upon written notice or terminate this entirely upon thirty (30) days written notice this Extended Warranty due to the Purchaser's breach of Extended Warranty. In the event of circumstances presenting a safety hazard to the riding public or KONE's technicians (including, but not limited to,

Purchaser's act of creating or allowing unsafe practices or Purchaser's failure to authorize necessary repairs or upgrades), KONE may immediately terminate this Extended Warranty in its entirety upon written notice.

PRICE ADJUSTMENTS

The price will be adjusted annually on January 1 of each year of the Extended Warranty.
The payment adjustment will reflect the increase or decrease in labor costs.

Labor
100% of the current price will be increased or decreased by the percent increase or decrease in the straight time hourly labor cost. The current straight time labor cost is the sum of the straight time hourly rate plus the cost of fringe benefits (fringe benefits include but are not limited to welfare, pension, vacations, paid holidays, insurance, and other union contributions) paid to elevator examiners in the locality the equipment is maintained.

KONE reserves the right to additionally adjust the price under extraordinary circumstances if the cost of fuel, insurance or other administrative expenses increase.

PAYMENT TERMS

Payments are due within ten (10) days of date of invoice. A delinquent payment charge calculated at the rate of 1½% per month, or if such rate is usurious then at the maximum rate under applicable law, shall be applied to delinquent payments. In the event of default of the payment provisions herein, Purchaser agrees to pay, in addition to any defaulted amount, all attorney fees, collection cost or court cost in connection therewith. Failure to pay any sum due by Purchaser within sixty (60) days will be a material breach. KONE may at KONE's option declare all sums due or to become due for the unexpired term immediately due and payable as liquidated damages, and until the same are paid, KONE may suspend service, and be discharged from further obligations under the Extended Warranty. If KONE exercises its right to suspend service, KONE shall not be responsible for injury or damage resulting from the lack of service. When service is resumed, Purchaser will be responsible for any costs KONE incurs as a result of the lapse in service.

These payment terms shall also be applicable to any charges for work outside the scope of this Extended Warranty.

EXTENDED TERM SAVINGS OPTION

It is agreed that in consideration of Purchaser's selection of one of the extended warranty terms set forth below, KONE will apply, upon acceptance of this agreement by Purchaser, the appropriate savings discount to the contract price throughout such warranty term and all term periods subsequent thereto.

Contract Term	Savings	Accepted
Ten (10) years	3%	
Fifteen (15) years	5%	YS NK
Twenty (20) years	7%	

PERFORMANCE CLAUSE

Purchaser may, at any time and at Purchaser's expense, call for an independent elevator consulting firm to evaluate KONE's performance within the scope of this Extended Warranty. The elevator consulting firm shall be mutually agreed upon by Purchaser and KONE.

If it is found KONE is not complying with the terms of this Extended Warranty, a detailed report shall be submitted to KONE outlining the specific requirements and a minimum period of ninety (90) days shall be allowed for KONE to correct the corresponding non-compliance.

In the event KONE fails to correct the noted material items within the allowed time, Purchaser shall have the right to terminate this Extended Warranty by giving KONE ninety (90) days written notice. Not withstanding this right, Purchaser remains obligated to pay all previously outstanding balances owed KONE.

PREPAYMENT DISCOUNT
It is agreed that in consideration of Purchaser's selection of one of the payment terms set forth below, KONE will apply, upon acceptance of this agreement by Purchaser, the appropriate savings discount to the warranty price.

Payment Term	Discount	Accepted
Annual in advance	2%	YS NK
Semi-annual in advance	1%	

TAX

Purchaser shall pay, in addition to the price, any tax imposed upon Purchaser by any existing or future law and the amount of tax imposed upon KONE, KONE's suppliers or Purchaser under any statute, court decision, rule or regulation currently effective or becoming effective after the date of this Extended Warranty which is based upon or incident to the transfer, use, ownership, or possession of the materials or equipment involved

in the performance hereof or the services rendered, hereunder.

OBLIGATIONS OF THE PARTIES

Nothing in this Extended Warranty shall be construed to mean that KONE assumes any liability of any nature whatsoever arising out of, relating to or in any way connected with the use or operation of the equipment covered by this Extended Warranty. Purchaser shall be solely responsible for supervising the use of the equipment and for taking such steps including but not limited to providing attendant personnel, warning signs and other controls necessary to ensure the safety of the user or safe operation of the equipment.

Purchaser shall at all times and at Purchaser's own cost, maintain a commercial general liability policy covering bodily injury and property damage with the limits of liability Purchaser's customarily carry for the life of this Extended Warranty (naming KONE as an additional insured) arising out of the services provided under the Extended Warranty and/or the ownership, maintenance, use or operation of the equipment described herein.

Neither KONE nor its affiliates shall be liable for any loss, damage, detention or delay caused by

KONE disclaims any warranty of any kind, either expressed or implied, including without limitation the implied warranties of merchantability or fitness for a particular purpose, or noninfringement.

This Extended Warranty is confidential between Purchaser and KONE and shall not be distributed to third parties. Additional Terms & Conditions Attachment A is considered an integral part of this Extended Warranty.

VENUE

The Purchaser does hereby agree that the exclusive venue for any dispute between the parties shall be in the County of Rock Island, State of Illinois.