- Intellectual Property for Construction and BIM
- Indemnity and Insurance
- Labor Agreements
- Building Codes
Intellectual Property

- Commercially valuable, intangible assets
  - Trademark
  - Patent
  - Copyright
  - Trade secret
Trademark

- Identification of Source
  - Letters
  - Numbers
  - Words
  - Symbols or logos
  - Colors (non-utilitarian)
  - Sounds
Patent

- Invention
  - Machines
  - Manufacturing processes
  - Engineered organisms
  - Compounds
  - Product configurations
- Design
Copyright

- Expression
  - Written works
  - Drawings
  - Software
  - Works of architecture
  - Some databases
IP Rights

- Ownership
- Use
  - License
Contribution

“expression, design, data or information that a Project Participant creates or prepares and ....”
CDS 301 IP Rights

- **Warranty to other Parties to Governing Contract**
  - (a) owner of all copyrights in all of that Party’s Contributions, or
  - (b) licensed or otherwise authorized ... to make such Contribution under the terms of this Addendum.
CDS 301 IP Rights – License

- Limited, non-exclusive license to reproduce, distribute, display, or otherwise use ... for purposes of this Project only
- Right to grant an identical sublicense to any other Project Participant
- Nothing in this Addendum is intended to ... transfer or otherwise affect any of the intellectual property rights that a Party may have ...
Digital Data

Information, including communications, drawings, specifications and designs, created or stored for the Project in digital form
E203 – 2013 IP Rights

- Transmission of Digital Data is warranty by transmitting Party to receiving Party that transmitting Party is copyright owner or has permission to transmit the Digital Data for its use on the Project ...

- By transmitting, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data
Receiving Party’s right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit.
Indemnity

- Compensation for loss
- Common law
  - Based on relationships
- Contract
  - Based on agreements
  - State law limitations
CDS 301 BIM Addendum – Indemnity

- Addresses only Intellectual Property Rights
  - Indemnify other Parties for third party claims arising out of alleged infringements in Party’s Contribution

- Each Party responsible for any Contribution it makes and for its access to a Model
  - Subject to Governing Contract provisions
Subsequent Model Element Authors and Model Users shall indemnify the Model Element Author from/against claims relating to modification to or unauthorized use of the original content.
AIA E203 – 2013 – Indemnity
Insurance

- Contract from insurance company to provide financial protection or loss reimbursement for specific causes of loss

- Different from “surety”
  - Agreement to pay money or provide performance owed by another if that other fails to act
Insurance for Construction Projects

- Liability Insurance
  - Commercial General Liability (CGL)
  - Professional Liability
- Property Insurance
  - Builders Risk
  - Permanent Property
  - Inland/Ocean Marine
- Wrap Programs
Insurance – Issues for Modular Construction

- Coverage for fabrication facility itself
  - Direct loss
  - Consequential loss
- Coverage for transportation
  - Who is at risk?
- Insurance treats contracted operations and products liability differently
Labor Agreements for Modular Construction

- NLRA § 8(f) Pre-Hire Agreements
- Collective Bargaining Agreement (CBA)
- Work traditionally done on-site moved off-site
- Jurisdictional issues
- Project Labor Agreement (PLA)
Typical PLA Provisions

- Excluded Employees and Work
  - Employees and entities engaged in [off-site] manufacture, modification, repair, maintenance, assembly, painting, handling, fabrication, delivery, or installation of project components, materials, equipment or machinery (including but not limited to furniture, millwork, equipment, and modular components)
  - Employees or representatives of [off-site] manufacturers, assemblers, or fabricators ... delivering, supervising, and installing such ... consistent with the current practices between Owner and the Unions
It is recognized that specialized or unusual equipment may be installed on the Project and in such cases, the Union recognizes the right of the Contractor and Owner to have the equipment supplier’s or vendors personnel deliver and install ... supervise delivery and installation ... make modifications to ... and make final alignment which may be necessary prior to and during the start-up process.
The Contractors shall utilize the most efficient method or techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design, nor shall there be any limit on production by workers or restrictions on the full use of tools or equipment.

- ... no restriction, other than may be required by safety regulations, on number of employees assigned to any crew or to any service.

- It is understood that Owner and CM have right to establish standards of excellence and to require all parties performing work on the Project to abide by those standards, and to generally promote labor-management harmony and cooperation.
Building Code Compliance

- IBC
- Open or Closed Construction
- Inspection
  - Construction
  - Design
- Non-compliance and changes or damage to modules after leaving assembly facility
- Vulnerability to continuing issues/delays
Before I built a wall I’d ask to know
What I was walling in or walling out,
And to whom I was like to give offence.

Robert Frost
Mending Wall