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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91230299
Party	Defendant Zachry Construction Corporation
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Date	08/24/2017
Attachments	FILED Stipulation Regarding Testimony Period.pdf(82504 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Serial No. 86/700,272  
For the mark: BUILDING THE EXTRAORDINARY  
Publication Date: June 7, 2016

EVENTSCAPE, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91230299
v.	)	
	)	
ZACHRY CONSTRUCTION	)	
CORPORATION,	)	
	)	
Applicant.	)	

STIPULATION REGARDING TESTIMONY PERIOD

Pursuant to Trademark Rules of Practice 2.122 and 2.123 and TBMP 704.11 and 705, Eventscape, Inc. (“Plaintiff”) and Zachry Construction Corporation (“Defendant”) (collectively, the “Parties”), through their undersigned counsel, stipulate as follows:

- (1) Documents produced by either party or third-party Brand Extract, LLC in response to requests for production or interrogatories under Rules 33 and 34 of the Federal Rules of Civil Procedure shall be deemed authentic business records and may be made evidence of record and relied upon in the above-identified proceeding without objection. All other objections are preserved.
- (2) During the Parties’ respective trial periods, the testimony from a deposition of any witness taken during the discovery period (whether a party or not) may be introduced by either party.

(3) During the Parties' respective trial periods, the testimony of witnesses may also be introduced by sworn declaration, with exhibits attached thereto, in lieu of testimonial depositions, provided the following procedure is followed:

- a. The party that wishes to introduce testimony of a witness by sworn declaration must serve a draft declaration on opposing counsel via email no later than twenty three (23) days before the party's trial period ends. If the draft declaration is sent by email without accompanying exhibits, a copy of the draft declaration with exhibits must be sent by overnight courier service (*e.g.*, FedEx) or through other electronic means (*e.g.* FTP).
- b. Opposing counsel shall have seven (7) days upon receipt of the draft declaration in which to send, via email, a list of written questions to be asked of the declarant identified in the draft declaration. The list of questions may include exhibits for the declarant to address.
- c. The party receiving the list of written questions and exhibits shall have seven (7) days in which to either:
  - i. Present the list of questions and exhibits to the Declarant and then provide an updated draft declaration to opposing counsel that includes the Declarant's answers to the questions and attaches the exhibits; or
  - ii. Inform opposing counsel that the draft questions and exhibits will not be submitted to the Declarant and that it will be necessary to conduct a testimony deposition.
- d. Within seven (7) days of receipt of an updated draft declaration, the party receiving the updated draft declaration shall either:

- i. Confirm that the updated draft declaration may be submitted as evidence; or
  - ii. Inform opposing counsel that the update draft declaration is not acceptable and that it will be necessary to conduct a testimony deposition.
- e. In the event that it becomes necessary to conduct a testimony deposition, the Parties shall stipulate to an appropriate extension of the trial schedule to permit the testimony deposition to be taken and the updated draft declaration shall not be submitted as evidence.
- (4) If Plaintiff wishes to introduce testimony during the Plaintiff's 15-day rebuttal period, the Parties shall meet and confer to determine whether such testimony can be submitted by declaration. In the event that the Parties cannot agree upon the content of the declaration, a testimony deposition shall be scheduled.

Dated: August 24, 2017

/J. Daniel Harkins/  
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