

Agreement between Owner and Contractor

ARTICLE 1 SUBCONTRACT TERMS AND CONDITIONS

This subcontract (hereinafter the "Contract") is made between the owner hereinafter referred to as "Owner" and the company referred on "Agreement between Owner and Contractor" document as "Contractor" and hereinafter referred to as "Contractor", under the supervision of Buddy L & Sons Construction, Inc. hereinafter referred to as "Project Manager".

The Contract Price shall be paid to Subcontractor by way of progress payments in the amounts and upon the times shown in the "REFERENCE DOCUMENT" referred in in the "Agreement between Owner and Contractor".

ARTICLE 2 SCOPE OF THE WORK

2.1 DESCRIPTION OF THE WORK OF CONTRACTOR. The Owner contracts with Contractor, as an independent contractor, to perform the work described herein and on Exhibit "B", a copy of which is attached hereto and incorporated herein by reference. Contractor shall perform such work (hereinafter called the "Contractor's Work") in a good and workmanlike manner, under the general direction of the Owner and the Project Manager, and in accordance with this Agreement and the Contract Documents, which are described in Article 14. Contractor agrees to furnish at its own cost and expense all labor, equipment, scaffolding, power, taxes, fees, materials, supplies, and other things necessary to perform and complete, in accordance with the Contract Documents described in Article 14, the work described herein and on Exhibit "B".

Notwithstanding the foregoing description of the work to be performed by Contractor, and notwithstanding any reference to any part or portion of the drawings or specification, Contractor shall nevertheless be responsible for providing and/or furnishing at the expense of Contractor all labor, equipment and materials which are or would normally be furnished by Contractor as determined by trade or industry practice. The description of the work to be performed or materials to be furnished by Contractor by reference to a section or sections of the drawings or specifications shall not serve to limit Contractor's obligation to that of performing only such work or furnishing only such materials as are described in that section or sections if work or materials that are within the general description of the section or sections would normally, usually or customarily be required of the Contractor by trade practice or by any other provision or section of the drawings or specifications. Contractor shall furnish all material and perform all work coming within the general description of the designated section or sections, and reference to such section or sections is solely for convenience in describing Contractor's work. Any dispute between contractors over responsibility for divisions or categories of work shall be reasonably resolved by Owner, whose decision shall be final.

2.2 CONTRACTOR INVESTIGATIONS. Contractor has thoroughly examined all of the Contract Documents, Drawings and Specifications and has examined the jobsite and ascertained the conditions for itself. Contractor enters into the contract relying on its own information and investigation and not on any statements or representations that may have been made by Owner, Project Manager or any architect, or engineer which in any manner relate to the conditions of the jobsite, the condition of the Project, or any applicable codes, statutes, regulations, ordinances or home owner association rules and regulations for work being performed at their premises.

2.3 CONFLICTS. In the event of any conflict between this Contract and any of the Contract Documents, this Contract shall govern.

**ARTICLE 3
SCHEDULE OF WORK**

3.1 TIME IS OF THE ESSENCE. Time is of the essence of the Contract, and Contractor agrees to conformance with the Contract Documents. Perform the work of improvement pursuant to the timelines described in the Schedule of Work below and in full.

3.2 COMPLETION OF TASKS. Contractor hereby agrees that Contractor shall perform work on the Project when Contractor receives notice from the Owner that the work of Contractor is ready to be performed.

3.3 SCHEDULE CHANGES. The forgoing Schedule of Work is a description of the number of working days within which Contractor agrees to perform portions of the work of improvement. However, the foregoing does not constitute any representation or promise by Owner as to which days the Project will be in a suitable condition to receive the work of Contractor. Contractor acknowledges and agrees that Owner and Project Manager shall have the sole discretion to indicate the days and times at which Contractor shall be able to perform work at the Project. Moreover, nothing in this Agreement shall constitute any representation or agreement by Owner that after commencing any portion of the work of improvement Contractor shall be able to work continuously or in an uninterrupted manner for any specific amount of time. Contractor agrees that the work of Contractor may without compensation to Contractor be interrupted, delayed, postponed, or rescheduled in any manner or for any length of time which Owner, in the sole discretion of Owner, deems advisable, prudent, appropriate or necessary.

3.4 PRIORITY OF WORK. The Owner and Project Manager shall have the sole and exclusive right to decide and determine the time, order, and priority in which the various portions of the work of improvement shall be performed.

3.5 SUBSTITUTE CONTRACTOR. In the event Contractor is unable or unwilling to diligently prosecute to completion the work of Contractor under this Contract, then Owner and Project Manager shall be entitled to terminate this Contract without penalty and to engage a new Contractor to complete the work of Contractor, or in the event this Contract is terminated pursuant to the terms of this paragraph, then Owner shall be entitled to recover from Contractor all extra costs, expenses, overhead, losses, injuries, damages, or lost profits incurred by Owner due to Contractor's not completing the work of this Contract.

**ARTICLE 4
PAYMENT**

4.1 PAYMENT USE RESTRICTION. Payment received by the Contractor shall first be used to satisfy the indebtedness owed by Contractor to any person or entity furnishing labor, equipment or materials for use in performing the Contractor's Work on the Project. Any amounts remaining after such payments shall be disbursed, paid, allocated or consumed in the manner determined by Contractor.

4.2 PAYMENT USE CONFIRMATION. Owner and Project Manager shall have the right at all times to contact the Contractor's subcontractors, vendors and suppliers to insure that the same are being paid promptly by the Contractor for labor, equipment or materials furnished for use or in connection with the performance of the Contractor's Work. However, nothing in this Contract shall obligate Owner to take any such action or confirm any such payment by Contractor.

4.3 PARTIAL LIEN WAIVERS AS PREREQUISITE FOR PAYMENT. Contractor shall provide in a form which complies with applicable law and in a form satisfactory to the Owner and Contractor, progress payment or final payment lien waivers and releases from Contractor and the suppliers, vendors, and subcontractors of Contractor. Notwithstanding anything else in this Agreement to the contrary, no payment shall be due from Owner to Contractor until such time as Contractor provides such waivers and releases for the work performed and materials and equipment supplied by Contractor which is the subject of such payment.

4.4 CONTRACTOR'S PAYMENT FAILURE. Upon payment by the Owner, Contractor shall promptly pay his subcontractors and material and equipment suppliers the amounts to which they are entitled. In the event that the Owner or Project Manager believes or expects that labor, material or other obligations incurred in the performance of the Contractor's Work have not been or may not be paid, then Owner may take any steps deemed necessary by Owner to ensure that progress payments to Contractor are utilized to pay such obligations including, but not limited to, the issuance of joint checks. Moreover, Owner and Project Manager shall have the right, at any time and in the sole discretion of Owner and Project Manager, to require Contractor to provide documentary evidence confirming that the subcontractors and the material and equipment suppliers of Contractor are being paid by Contractor for the equipment, materials and labor which they are providing or have provided to the Project. If, upon request by Owner or Project Manager, the Contractor does not supply written evidence to the satisfaction of the Owner and Project

Manager that the monies owing to the Contractor and suppliers of Contractor have been paid, then Owner shall be entitled to require Contractor to post a bond with a surety acceptable to Owner at the expense of Contractor in the full amount of the payment to be made under Contractor under this Contractor or any lesser amount which is satisfactory to Owner. Any such bond shall inure to the benefit of Owner, and Owner's surety if any. In the event Contractor fails or refuses to promptly post such a bond after request by Owner or Project Manager, then Owner shall have the right either to 1) terminate this Contract or 2) to withhold from Contractor further payments until the work of Contractor under this Contract is completed and Owner is satisfied that all suppliers and subcontractors of Contractor have been fully paid. Nothing in this paragraph shall be deemed to limit, modify, reduce or impair the obligation of Contractor to diligently pursue the work of the Contractor under this Contract unless Contract terminates the Contract as provided by this paragraph.

4.5 CONTRACTOR'S ASSIGNMENT OF PAYMENTS. Contractor shall not assign any monies due or to become due to Contractor under this Contract or under any change order thereto without the written consent of Owner.

4.6 PAYMENT NOT ACCEPTANCE. Payment to the Contractor does not constitute or imply acceptance of any portion of the Contractor's work. No payment made under this Agreement shall operate as any acceptance by Owner of any part of Contractor's work or as any admission by Owner that this Agreement, or any part of it, has been complied with by Contractor unless Contractor has, in fact, complied with this Agreement.

4.7 PROGRESS PAYMENT. Contractor shall issue invoices and lien releases monthly for all work completed during that month. The invoice shall be itemized as to all equipment, materials, or labor supplied by Contractor and supported by documentary evidence showing the work completed which is the subject of such invoice and release. Contractor agrees that any determination of the percentage of completion accomplished by Contractor which is made by Owner, Project Manager or any agent, employee or representative of Owner or any Construction Lender shall be binding upon Contractor for purposes of determining the amount of any progress payment due to Contractor.

4.8 RETAINER/SECURITY. Owner shall withhold ten percent (10%) of each payment amount due to Contractor (hereinafter the "Retention"), which amount shall serve as additional security to Owner for the full timely and faithful performance of Contractor under the Contract.

4.9 TIME OF PAYMENT. Progress payments to the Contractor for satisfactory performance of the Contractor's Work shall be made upon the earlier of 1) the tenth day following the end of the month in which the invoice and releases for the work and materials which are the subject of the invoice are submitted to the Owner.

4.10 PAYMENT DELAY. If Owner or Project Manager, in its sole discretion, determines that the Contractor's Work does not meet industry standards, does not comply with the Contract Documents, has not been performed in a good and workmanlike manner, fails to comply with any statute, code, ordinance or regulation, or is otherwise unsatisfactory, then Owner may delay payment of any progress payment until such time as Contractor's Work is repaired, removed, replaced, or otherwise made satisfactory to Owner and Project Manager. Contractor shall not be entitled to any interest on any payment withheld from Owner as provided by this paragraph. Nothing in this paragraph or this Contractor complies with all applicable codes, statutes, regulations, ordinances and building codes, (hereinafter the "Applicable Codes") and Contractor shall at all times and in all events be fully and solely responsible to construct the work of Contractor in full compliance with all Applicable Codes.

4.11 FINAL PAYMENT. Before the Owner shall be required to pay the Contractor's invoice for final payment and release of the retainage the Contractor shall submit to the Owner or Project Manager:

- (a) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Contractor's Work for which the Owner or his property or the Owner's surety might be in any way liable, have been paid or otherwise satisfied;
- (b) Consent of surety to final payment, if required;
- (c) Satisfaction of Owner with the close-out procedure required by Owner;
- (d) Certification that insurance required by the Contract Documents will remain in effect beyond final payment pursuant to Article 11 and will not be canceled or allowed to expire without at least thirty (30) days written notice to the Owner unless a longer period is stipulated in the Contract; and
- (e) Other data if required by the Owner or Project Manager such as receipts, releases, manufacturer warranty information and documentation, and waivers of liens to the extent and in such from as may be designated by the Owner. Final payment shall constitute a waiver of all claims by the Contractor relating to the Contractor's Work, but shall in no way relieve the Contractor of liability for the obligations assumed under this Agreement or for faulty, defective or incomplete work of Contractor.

**ARTICLE 5
CHANGES, CLAIMS AND DELAYS**

5.1 OWNER CHANGES. The Owner and Project Manager may make changes in the Work by issuing Modifications (hereinafter "Modifications") to the Prime Contract. Upon receipt of such Modifications issued subsequent to the execution of this contract, Owner or Project Manager shall promptly notify the Contractor of the Modification. Unless otherwise directed by the Owner or Project Manager, the Contractor shall not thereafter order materials or perform Work which would be inconsistent with the changes made by the Modifications to the Prime Contract or the Contract Documents.

5.2 CHANGES. The Contractor may be ordered in writing by the Owner or Project Manager, without invalidating this Contract, to make changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, including those required by Modifications to the Contract Documents issued subsequent to the execution of the Agreement, the Contract Sum and the Contract Time being adjusted accordingly. The Contractor, prior to performing any further work on the Project and prior to the commencement of such changed or revised Work, shall submit promptly to the Project Manager written copies of a claim for adjustment to the Contract Sum and Contract Time for such revised Work.

5.3 CONTRACTOR CLAIMS. The Contractor shall make claims promptly to the Owner or Project Manager for additional cost or extensions or time as the Modifications may require. Any claim by Contractor for extra compensation due to changes in the Contract Documents shall be reasonable. In the event that Owner, Project Manager and Contractor cannot agree upon a change to the amount to be paid to Contractor for Modifications or changes to the Work of Contractor, then Owner or Project Manager may elect to have the additional work required by the Modifications performed by another Contractor or may elect to perform such additional work as may be required by the Modifications with his own forces. Contractor agrees that in such event the compensation to be paid to Contractor under this Contract shall be reduced by a reasonable amount if the Modifications will result in any reduction in the scope of work or materials to be supplied by Contractor. Should Owner or Project Manager determine that it would be impracticable to have the remainder of the Contract work performed by Contractor and the Modifications performed by another Contractor or by Owner's own forces, then Owner shall be entitled to terminate the Contract and pay Contractor or the value of the work and services provided by Contractor up through the date of termination. In the event of any such termination, Contractor shall be entitled only to recover the reasonable value of labor, services, equipment and material provided to the Project, and shall have no claim for lost profits, lost opportunities, future overhead, mobilization charges, demobilization charges, or consequential damages, losses, or injuries of any kind or nature whatsoever.

**ARTICLE 6
OBLIGATION**

6.1 CONTRACT DOCUMENTS. Prior to executing the Contract, the Owner or Project Manager shall make available to the Contractor the Contract Document which are binding on the Contractor and which are set forth in Article 14.

**ARTICLE 7
CONTRACTORS OBLIGATIONS**

7.1 OBLIGATIONS DERIVATIVE. The Contractor shall make available to its lower tier subcontractors the Contract Documents, which Contract shall make binding on the lower tier subcontractors.

7.2 RESPONSIBILITIES. The Contractor shall furnish all of the labor, materials, equipment, and services including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as necessary for the proper performance of the Contractor's Work in accordance with the Contract Documents.

Prior to commencing work on the Project, Contractor shall provide to Owner and Project Manager a list of proposed subcontractors and suppliers, shall be responsible for taking field dimensions, providing tests, ordering materials, and all other actions necessary to meet the Schedule of work.

7.3 SUPERVISION. Contractor agrees that the Work performed under this Agreement will be under the direct supervision by a contractor employee. This supervision shall be performed at least once a day for each day that Contractor's Work is being performed. The Supervisor shall not be changed without written approval by the Owner or Project Manager. Said supervisor shall be authorized to receive instructions from Owner and Project Manager and shall be authorized to make such decisions on behalf of Contractor as are necessary for the prompt and efficient performance of the work of Contractor under this Agreement.

7.4 CONTRACTOR'S ASSIGNMENT OF WORK. The Contractor shall not assign the whole or any part of the Contractor's Work without the prior written approval of the Owner or Project Manager.

7.5 CONTRACTOR'S CONTRACTED SERVICES. The Contractor shall not subcontract the whole or any part of the Contractor's Work without the prior written approval of the Owner or Project Manager.

7.6 NON-CONTRACTED SERVICES. The Contractor agrees, except as otherwise provided in the Agreement, that no claim by Contractor for non-contracted construction services rendered or materials furnished shall be valid unless the Contractor provides Owner and Project Manager with a written proposal for such services, and such written proposal is signed by Owner or Project Manager. Neither party shall have the ability to orally change the provisions of this paragraph, and any such attempted oral modification shall be void. **Contractor expressly agrees for all purposes that any labor, equipment or materials outside the scope of the Contract which are provided by Contractor to the Project without the prior written consent of the Owner or Project Manager shall for all purposes be deemed to have been supplied to the Project not at the instance or request of Owner or Project Manager or any agent, employee or representative of Owner, and shall not be deemed to have benefited the Owner, the Project or the value thereof. The provisions of the paragraph are hereby made expressly admissible and controlling in any subsequent claim, suit, action or proceeding by Contractor against any person or entity or Quantum Meruit, Quantum Valebant, Indebitatus Assumpsit, any common count, and any claim by Contractor for oral contract, oral modification of contract, or any similar claim under any similar theory which in any manner relates to any labor, equipment, or materials which Contractor claims to have provided to the Project which are outside the scope of the Contract. Contractor expressly agrees that unless the written consent of the Owner or Project Manager is first obtained, the providing by Contractor of any labor, equipment or materials to the Project which are outside the scope of the Contract shall for all purposes be deemed not to result in any unjust enrichment to Owner or any other person or entity. Nothing in this paragraph shall be construed to limit the legal rights of Contractor to record a mechanic's lien or commence an action to foreclose any such lien.**

7.7 SHOP DRAWINGS. The Contractor shall be solely responsible for ensuring and confirming that any shop drawings prepared or submitted by Contractor adequately conform in all respects to all requirements of the Contract Documents. Any cost, loss or damage resulting from any non-conformance of shop drawings to the Contract Documents shall be the sole responsibility of Contractor, and Contractor shall defend, indemnify and hold harmless Owner from all claims, actions or proceedings which in any manner relate to any loss, cost or damage arising from any failure of any shop drawings of Contractor to conform to any requirement of the Contract Documents. Shop drawings, or the approval by the Owner or Project Manager, shall not be deemed to authorize deviations or substitutions from the requirements of the Contract Documents.

7.8 COORDINATION. The Contractor shall:

- (a) Cooperate with the Owner and Project Manager and all others whose work may interfere with the Contractor's Work;
- (b) Specifically note and immediately advise the Owner or Project Manager of any such interference with the Contractor's Work; and
- (c) Participate in the preparation of coordination drawings and work schedules in areas of congestion.

7.9 PROVISIONS FOR INSPECTION. The Contractor shall notify the Owner and/or The Project Manager when portions of the Contractor's Work are ready for inspection. The Contractor shall at all times furnish the Owner and its representatives adequate facilities for inspecting materials at the site or any place where materials under the Agreement may be in the course of preparation, process, manufacture, or treatment. Any approval by Owner or The Project Manager following inspection of any of the labor, equipment or materials provided to the Project by Contractor shall not in any degree relieve Contractor of Contractor's liability for providing any defective, inadequate, or improper labor, equipment or materials, and following any inspection by Owner or The Project Manager, Contractor shall remain fully and completely liable therefore.

The Contractor shall furnish to the Owner or The Project Manager, in such detail as is required by Owner or The Project Manager, full reports of the progress of the Contractor's Work irrespective of the location of such work.

7.10 CLEANUP. The Contractor shall follow the Owner's or The Project Manager cleanup and safety directions, if any, and in addition to any such directions shall:

- (a) At all times keep the Project, site and street free from debris, rubbish and unsafe conditions resulting from the Contractor's Work;
- (b) On completion of its work, promptly remove all surplus materials, tools, scaffolding and equipment, and

(c) Broom clean each work area prior to discontinuing work in the same.

If the Contractor fails to immediately commence compliance with cleanup duties within twenty-four (24) hours after written notification from the Owner or The Project Manager of non-compliance, the Owner or The Project Manager may implement such cleanup measures without further notice and deduct the cost thereof from any amount due or to become due to the Contractor. Any equipment, tools, or materials which are not removed by Contractor within three business days after substantially completing the work of Contractor shall be deemed to have been abandoned by Contractor and may be disposed of by Owner or The Project Manager without accounting for such items to Contractor.

7.11 SAFETY. The prevention of accidents on or in the vicinity of its work is the Contractor's responsibility, even if the Owner or The Project Manager establishes a safety program for the entire Project. Contractor shall establish a safety program implementing safety measures, policies, and standards conforming to those required or recommended by governmental and quasi-governmental agencies having jurisdiction and by the Owner or The Project Manager including but not limited to, requirements imposed by the Contract Documents. Contractor shall comply with the reasonable recommendations of insurance companies that have any interest in the Project and shall stop any part of the Work which Owner or The Project Manager deems unsafe until corrective measure satisfactory to Owner or The Project Manager shall have been taken. Contractors' failure to stop any unsafe practice by Contractor shall not relieve Contractor of the responsibility thereof. Contractor shall at all times be fully liable and responsible for proceeding with work on the Project in a safe manner. Owner shall not be responsible for safe or unsafe working conditions of Contractor and nothing in this Contract shall be construed to require Owner or The Project Manager to monitor, inspect, supervise or control the work of Contractor with respect to safe working conditions or practices. Contract shall fully defend, indemnify and hold harmless Owner of and from all claims; suits, demands, actions, or proceedings with are filed or commenced against Owner which in any manner result from any unsafe condition or practice utilized by Contractor. Further, Contractor hereby agrees to fully defend, indemnify and hold harmless Owner of and from any claim, suit, demand, action or proceeding commenced or filed by and employee of any agent, representative, Contractor, or supplier of Contractor which in any manner relates to the work of Contractor on the Project. Notwithstanding the foregoing, Contractor shall not be required to defend, indemnify or hold harmless Owner of or from any claim, demand, suit, action or proceeding which is filed or commenced against Owner and which is based on the sole negligence or willful injury or damage by Owner. Contractor shall notify Owner or The Project Manager immediately following any accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Owner or The Project Manager. Contractor shall indemnify Owner for fines, damages, or expenses incurred by the Owner because of the Contractor's failure to comply with any safety requirements or procedures which are enforced or promulgated by any governmental entity or agency. Contractor shall at all times fully comply with all applicable codes, statutes, regulations and ordinances regarding safe procedures and workplace and worker safety.

7.12 PROTECTION OF THE WORK. Contractor shall take necessary precautions to properly protect Contractor's Work and the work of others from damage caused by Contractor's operations. Should Contractor cause damage or loss to the work or property of Owner, or others, then Contractor shall promptly pay for such damages to the satisfaction of the Owner, or the Owner may pay for such damage or loss and deduct the cost thereof from amounts due or to become due to Contractor.

7.13 PERMITS, FEES AND LICENSES. Contractor shall give adequate notices to all applicable governmental entities or authorities which are required by any such entity or authority and which are in any manner related to Contractor's Work. Owner shall obtain and pay for any necessary building permit, electrical permit, plumbing permit and mechanical permits, and grading/grubbing permits. Contractor shall secure and pay for all other permits, fees, licenses, assessments, inspections, and taxes necessary to complete Contractor's Work in accordance with the Contract Documents. Contractor shall promptly pay any re-inspection fees that may be caused by Contractor's Work not passing inspection.

ARTICLE 8 CONTRACT PROVISIONS

8.1 LAYOUT RESPONSIBILITY AND LEVELS. Contractor shall be strictly responsible for the accuracy of Contractor's Work and for any loss or damage to the Owner or others by reason of Contractor's failure to schedule or perform its Work correctly.

8.2 WORKMANSHIP. Every part of Contractor's Work shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike and substantial manner. All workmanship shall be of the best of its several kinds, and all materials used in Contractor's Work shall be furnished in ample quantities to facilitate the proper

and expeditious execution of the Work; and shall be new except such materials as may be expressly provided in the contract Documents to be otherwise.

8.3 MATERIALS FURNISHED BY OTHERS. In the event the scope of the Contractor's Work includes installation of materials or equipment to be furnished by others, it shall be the responsibility of the Contractor to examine the items so provided and thereupon handle, store, and install such items with such skill and care as to ensure satisfactory and proper installation. Loss or damage due to actions, inactions, or negligence of Contractor shall be deducted from any amounts due or to become due to Contractor.

8.4 SUBSTITUTIONS. No substitutions shall be made in Contractor's Work unless permitted in the Contract Documents and only then upon written authorization from Owner or The Project Manager. Contractor shall defend, indemnify and hold harmless the Owner as a result of any unauthorized substitution has been made, and shall promptly pay for any consequential loss, damage, cost, or injury caused in whole or in part by any such unauthorized substitution.

8.5 USE OF PROJECT MANAGER'S EQUIPMENT. Contractor, its agents, employees, subcontractors or suppliers shall not use the Project Manager's equipment without the express written permission of the Project Manager.

If the Contractor or any of its agents, employees, suppliers or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of the Project Manager, then Contractor shall defend, indemnify and hold harmless Project Manager and Owner as provided in Article 10 for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have due solely to the negligence of Project Manager or Owner.

8.6 WARRANTY. Contractor warrants its work against all deficiencies and defects in material and/or workmanship. Upon request by Owner or Project Manager, Contractor shall fully and promptly remedy and defect, inadequacy or incompleteness in the work of Contractor, and if such defect, inadequacy or incompleteness has caused any damage, loss or injury to other portions of the Project or other property of Owner, or others, then Contractor shall promptly pay for all such loss, damage or injury.

Contractor hereby provides an express warranty of its work for a period of one year from the date of completion of the Project.

8.7 NOTICES. Any Notice which is to be sent to either of the Parties to the Contract shall be sent to such Party at the address listed immediately beneath that party's signature at the end of this Contract, and shall be sent either by Federal Express or Certified U.S. mail, return receipt requested. Any party may change its address for purpose of serving notices by providing the other party with notice of such change in address through the method of providing notice as provided in this paragraph.

ARTICLE 9 RECOURSE BY OWNER

9.1 FAILURE OF PERFORMANCE.

9.1.1 Notice to Cure. If Contractor refuses or fails to supply enough properly skilled workers or the materials necessary to enable the work of Contractor to be performed in compliance with the Schedule of Work, or if Contractor fails to make prompt payment to its workers, lower tier subcontractors, vendors or suppliers, or if Contractor should fail to follow or comply with any applicable statute, code, ordinance or regulation, or in the event Contractor breaches any other material term of the Contract or any of the Contract Documents, then Contractor shall be in default of the obligations of Contractor under this Agreement. If Contractor fails within three (3) working days after written notification to correct any such default with diligence and promptness, then Owner or Project Manager without prejudice to any rights or remedies of Owner shall have the right to one or more of the following remedies.

- (a) Supply such number of workers and quality of materials, equipment and other facilities as Owner or Project Manager deems necessary for the completion of Contractor's Work; or any part thereof which Contractor has failed to complete or perform after the aforesaid notice and charge the cost thereof to Contractor, which shall be liable for the payment of the same including reasonable overhead, profit, and attorney's fees of Owner.
- (b) Contract with one or more additional subcontractors to perform such part of Contractor's Work as the Owner or Project Manager shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to Contractor.
- (c) Withhold payment of any money due to Contractor pending corrective action in amounts sufficient to cover losses and additional expenses incurred by reason of the default of Contractor, including but not limited to attorneys fees of Owner; or
- (d) Terminate the Contract.

(e) In the event of an emergency affecting the safety of persons or property, Owner or Project Manager may proceed as described above in (a), (b) or (c) above without prior notice to Contractor.

9.1.2 Effect of Default. In the event of any default by Contractor such that Owner or Project Manager either retains others to complete the work of Contractor, or completes the work of Contractor with Owner or Project Manager's own forces, or terminates the Contract, then Contractor shall be liable to Owner for the difference between 1) the Contract price and 2) the amounts paid to Contractor plus the actual cost to Owner to complete the work of Contractor. Further, in the event of any such default, Contractor shall be fully liable to Owner for all incidental or consequential damages to Owner, including but not limited to all losses, costs, expenses, or damages due to delay in completion of the Project or extra cost in completing the Project, along with all lost profits and lost opportunity costs of Owner.

9.1.3 Use of Contractor's Materials and/or Equipment. If the Owner or Project Manager performs work under this Article, due to Contractor's failure to perform, or sublets such work to be performed, and if Contractor does not within three working days form the Project all materials, tools, equipment or appliances belonging to Contractor, then Owner , Project Manager and/or the persons to whom work has been sublet shall have the right to take and use without compensation to Contractor any materials, implements, equipment, appliances, or tools, furnished by, belonging or delivered to the Contractor and located on the Project.

9.2 BANKRUPTCY. If Contractor files a petition in Bankruptcy or makes a general assignment for the benefit of creditors, then this Agreement shall terminate if the Contractor, or the Contractor's trustee rejects the Agreement or, if there has been a default, the Contractor is unable to give adequate assurances that the Contractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

9.2.1 Interim Bankruptcy Remedies. If the Contractor is not performing in accordance with the Schedule of Work at the time any petition in bankruptcy is filed, or at any subsequent time, the Owner or Project Manager, while awaiting the decision of the Contractor or its trustee to reject or assume the Agreement and provide adequate assurance of its ability to perform hereunder may avail itself of such remedies under this Contract as are reasonably necessary to maintain the Schedule of Work. The Owner may offset against any sums due or to become due the Contractor all costs incurred in pursuing any of the remedies provided hereunder including, but not limited to, reasonable overhead, profit and attorney's fees.

ARTICLE 10 INDEMNIFICATION

10.1 CONTRACTOR'S PERFORMANCE. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Project Manager, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance, non-performance, or incorrect performance of the Contractor's Work under this Contract, provided that such claim, damage, loss or expense is related or attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting there from. Such obligation shall not be construed to limit, negate, abridge, or otherwise reduce other rights or obligations of indemnity which would or which do otherwise exist as to a party or person described in this Article.

10.2 INDEMNITY LIMITATIONS. In claims against any person or entity indemnified under this Article by any employee of the Contractor, the Contractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor of the Contractor's Sub-subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

10.3 ARCHITECTURAL INDEMNITY. The obligations of the Contractor under this Article shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

10.4 APPLICATION OF LAWS. The Contractor agrees to be bound, at its own cost by and to comply with all federal, state and local laws, statutes, ordinances, and regulations (hereinafter collectively referred to as "Laws") applicable to the Contractor's Work including, but not limited to, equal employment opportunity, minority business enterprises, women's business enterprises, disadvantaged business enterprises, safety and all other laws with the Owner must comply according to the Contract Documents.

10.5 COMPLIANCE WITH ALL LAWS. The Contractor shall be liable to the Owner for all losses, costs, damages, or expenses attributed to any acts of commission or omission by the Owner by the Contractor, its employees or agents resulting from the failure to comply with any of the Laws, including, but not limited to, any fines or penalties assessed due to any non-compliance, or corrective measures which are ordered or required because of any such non-compliance.

10.6 EXTENDED SCOPE OF INDEMNITY. The indemnity obligations of Contractor shall continue not only during the course of performance of Contractor's work but shall also apply to all claims, demands, or liabilities for damage, loss or injury occurring after completion of the Project, and shall extend to all such claims which are caused in whole or in part by the negligence or intentional misconduct of Contractor or any agent, employee, representative, supplier or sub-Contractor of Contractor.

ARTICLE 11 INSURANCE

11.1 CONTRACTOR'S INSURANCE. Prior to the start of the Contractor's Work, the Contractor shall procure for the Contractor's Work and maintain in force throughout Contractor's work on the project worker's comprehensive or commercial general liability insurance on an occurrence basis, and any other type of insurance required of the Owner under the Contract Documents.

Contractor shall take all such steps as are necessary to have the Owner and Project Manager named as additional insured's on each of such policies except for worker's compensation and automobile policies of insurance. The insurances required by this paragraph shall include comprehensive general liability insurance covering the Contractor's obligations under Article 11. The insurance policies under this Article which are to name Owner and Project Manager as additional insured's and shall provide that the coverage which is to be afforded under such policies for work to be done by Contractor is to be primary and any insurance policies held or owned by Owner or Project Manager are to be considered excess and non contributory. CERTIFICATE SHALL STATE "INSURANCE IS PRIMARY"

11.2 INSURANCE TO BE PROVIDED:

11.2.1 Workers Compensation: Contractor to provide Statutory Worker's Compensation and Employer's Liability with a minimum coverage of \$1,000,000.00 each accident bodily injury, \$1,000,000.00 bodily injury by disease. Waiver of Subrogation to be included.

11.2.2 General Liability Insurance. Contractor's Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Contractor providing insurance for bodily injury liability and property damage liability for the limits and conditions listed below as well as those required by Paragraph 11.1:

- Premises and Operations
- Products and completed operations
- Contractual liability insuring the obligations assumed by Contractor in this Agreement
- Broad form property damage (included completed operations)
- Personal Injury liability
- Contractor's insurance to be Primary to Owner's and Owner's
- Owner to be listed as Additional Insured
- Waiver of Subrogation

The limits of liability shall be not less than the following

- \$1,000,000.00 for each occurrence (combined single limit for bodily injury and property damage)
- \$1,000,000.00 for personal injury liability
- \$1,000,000.00 aggregate for products-completed operations
- \$2,000,000.00 general aggregate

11.2.3 Automobile Liability. The Contractor's comprehensive or commercial general liability insurance and comprehensive automobile insurance as required by Paragraph 11.1 shall be written with limits of liability as described herein:

- \$1,000,000.00 Owned, Hired and Non-owned Auto.

11.3 NUMBER OF POLICIES. Comprehensive or commercial general liability insurance and other liability insurance may be arranged under a single policy for the full limits required or by the combination of underlying policies with the balances provided by excess or umbrella policy.

11.4 CANCELLATION, REMOVAL OR MODIFICATION. The Contractor shall maintain in effect all insurance coverage required under this Agreement at the Contractor's sole expense and with insurance companies acceptable to the Owner or Project Manager. All insurance policies shall contain the provision that the coverage afforded thereunder

shall not be canceled or not renewed nor restrictive modifications added until at least thirty (30) days' prior written notice has been given to the Owner or Project Manager unless otherwise specifically required in the Contract Documents.

11.5 INSURANCE CERTIFICATES. Certificates of insurance, or certified copies of policies acceptable to the Owner or Project Manager shall be filed with the Owner or Project Manager prior to the commencement of the Contractor's Work. However, any failure to provide Owner or Project Manager with such certificates or certified copies shall not abridge, limit, reduce or modify the obligations of Contractor to obtain and maintain the insurances required by this article.

11.6 REMEDIES. In the event that Contractor fails to obtain or retain any insurance coverage required under this Agreement, the Owner or Project Manager may, but shall not be required to, purchase such coverage and charge the expense thereof to the Contractor, or terminate this Agreement.

ARTICLE 12 DISPUTE RESOLUTION

12.1 DISPUTE RESOLUTION

The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof, except for any claim, dispute or controversy controlled by HRS § 672E, shall be resolved by a lawsuit filed in the court with the appropriate jurisdictional limits located in the Second Circuit of the State of Hawaii, located in Wailuku, Maui, Hawaii. Nothing in this agreement shall be construed to require mediation or any type of arbitration to resolve any claim, dispute or controversy arising out of or relating to this agreement, or the breach thereof.

ARTICLE 13 CONTRACT INTERPRETATION

13.1 INCONSISTENCY AND OMISSIONS. Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of the Contractor to so notify the Owner or The Project Manager in writing within three (3) working days of the Contractor's discovery thereof. Upon receipt of said notice the Owner or Project Manager shall instruct the Contractor as to the measures to be taken and the Contractor shall comply with the Owner or Project Manager's instructions.

13.2 LAW IN EFFECT. This Agreement shall be governed by the laws of the State of Hawaii.

13.3 SEVERABILITY AND WAIVER. In the event any term or provision of the Contract or if any of the Contract Documents is found or determined to be void, voidable, illegal or invalid, then in such event the remaining terms and provisions of the Contract and the Contract Documents shall not be affected by such finding. The failure of either party hereto to insist in any one or more instances upon the performance of any of the terms, covenants or conditions of the Agreement or to exercise any right hereof, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

13.4 CAPTIONS. The captions given to the several Articles and paragraphs in this Agreement are for ease of reference only and shall not be deemed to have any substantive meaning whatsoever.

13.5 ENTIRE AGREEMENT. This Contract represents the entire and integrated agreement between the parties hereto and fully supersedes and incorporates all prior and contemporaneous negotiations, representations, understandings and agreements, both written and oral.

13.6 NEGOTIATED CONTRACT. This Contract shall for all purposes be deemed to be the product of negotiation between the parties hereto, shall not be deemed to have been prepared by only one of the parties hereto, and shall for all purposes be deemed to have been jointly prepared by both of the parties hereto.

13.7 CONTROLLING DOCUMENT. In the event that any Proposal or any form of contract, contract, or similar document from Contractor is attached to any part of this Contract, then the attached of such document will have been made for the convenience of the Parties to this Contract and not for the purpose of modifying or limiting any of the terms or provisions of the Contract. In the event such a document from Contractor is attached to any portion of this Contract, this Contract and its exhibits shall for all purposes be controlling.

13.8 WARRANTY OF AUTHORITY. Each person signing this Contract on behalf of a Corporation hereby represents and warrants that such person is fully authorized to sign this Contract on behalf of such corporation, and that no

further corporate action or resolution is necessary in order to have this Contract be fully binding on such corporation by the signature of such person.

ARTICLE 14
CONTRACT DOCUMENTS

14.1 CONTRACT DOCUMENTS. The Contract Documents (hereinafter the "Contract Documents") shall be based on the most current date of the document as of the execution of this Agreement consisting of all engineering or other specifications prepared for the Project (hereinafter the "Specifications"), all applicable governmental statutes, regulations, ordinances, codes and building codes, home owner associations rules and regulations and the following specifically described documents:

1. Architectural drawings
2. Structural Engineering drawings
3. Civil Engineering drawings
4. General Conditions of the Contract between Owner and Contractor