

## SUBCONTRACT AGREEMENT

This Subcontract Agreement (the "Subcontract") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between:

|                |  |
|----------------|--|
| Contractor:    | JNS CONTRACTING FLORIDA, LLC<br>515 North Flagler Avenue, Suite 210<br>West Palm Beach, Florida 33401<br>Telephone: (561) 363-5500<br>Electronic Mail: rromero@jns-homes.com |
| Subcontractor: | [NAME, ADDRESS, PHONE AND FAX]   |
| The Project:   | [NAME AND ADDRESS OF PROJECT]  |
| The Owner:     | [NAME, ADDRESS, PHONE AND FAX]   |
| The Architect: | [NAME, ADDRESS, PHONE AND FAX]   |

JNS CONTRACTING FLORIDA, LLC (“Contractor”) and \_\_\_\_\_ (“Subcontractor”) (collectively the “Parties”), for ten dollars (\$10.00) in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which, are hereby acknowledged, enter into the Subcontract and agree as follows:

## **ARTICLE 1: CONTRACT DOCUMENTS**

- 1.1 The Contract Documents shall consist of the Subcontract and all Exhibits and Addenda attached hereto, and in addition, the following documents, all of which are specifically incorporated herein by reference:
  - A. The Contract between Contractor and the Owner, \_\_\_\_\_ (the “Owner”)(the “Prime Contract”), the Conditions of the Contract (General, Supplementary and other conditions), all addenda issued prior to the execution of the Subcontract and all modifications issued subsequent thereto, and the Contract Documents referenced in Exhibit “A” attached hereto and specifically incorporated herein by reference.
  - B. The Plans and Specifications dated \_\_\_\_\_ and prepared by \_\_\_\_\_ (the “Architect”). An enumeration of the Plans and Specifications is set forth in Exhibit "B", which is attached hereto and specifically incorporated herein by reference.
  - C. The Initial Construction Schedule attached hereto as Exhibit “C” and specifically incorporated herein by reference, as well as all any updates as provided by Contractor in Contractor’s sole and exclusive discretion.
- 1.2 Copies of the Contract Documents, which are applicable to the performance of the Subcontractor’s scope of work set forth in Article 2 below, are available for inspection at Contractor’s office and shall be furnished to Subcontractor upon request and upon payment of the cost of reproduction.
- 1.3 The Contract Documents are specifically incorporated herein by reference and are part of the Subcontract between Contractor and Subcontractor.
- 1.4 Subcontractor assumes and agrees to be bound to the Contractor by all of the terms, obligations and duties that the Contractor owes to the Owner under the Prime Contract, to the extent of Subcontractor's Work. Contractor shall have the same rights against the Subcontractor as the Owner has against the Contractor under the Prime Contract.
- 1.5 Subcontractor represents and agrees that it has carefully examined and understands the Subcontract and all of the Contract Documents, and has investigated the nature, locality, and site of the Work, and the conditions and difficulties under which the Work is to be performed, and that Subcontractor enters into the Subcontract on the basis of its own examination, investigation, and evaluation of all such, matters, and not in reliance upon any opinions and/or representations of the Contractor, the Owner, or of any of their respective officers, agents or employees, including the Architect and/or Engineers.
- 1.6 It is the intention of the Parties that the Contract Documents are complementary. However, in the event that such an interpretation is not possible, or in the event of a conflict between or

among the terms of the Contract Documents, the higher standard and/or greater requirement of the Contract Documents shall prevail.

## **ARTICLE 2: SCOPE OF WORK**

- 2.1 Subcontractor agrees to furnish all labor, services, materials, supervision, administrative and technical support, testing, hoisting, barriers, scaffolding, insurance, bonds, permits, fixtures, equipment tools, supplies and other labor, services and materials necessary in order to timely and fully perform, clean up, and complete Subcontractor's Work (the "Work") defined as follows:
- 2.2 The Subcontractor shall perform the following Work:
- A. Provide all labor, services, materials, and supervision necessary to complete the portion of the Project as per the Contract Documents, including the Plans and Specifications, set forth in Exhibit "A", which is attached hereto and specifically incorporated herein by reference, in full and complete compliance with all federal, state, local and/or municipal building codes and any other applicable laws of any agency, federal, state, local, or municipal, having authority over the Project.
  - B. Provide all shop drawings, submittals, calculations, and inspections necessary to complete the Project in accordance with the Contract Documents.
  - C. Maintain and update As-Built Drawings as construction progresses and as otherwise deemed necessary by Contractor, the Owner, the Architect and/or the Engineer, or their respective representatives.
  - D. Obtain all Permits and pay all applicable taxes in connection with the performance of the Work including, but not limited to, sales tax, FICA, as well as any other taxes.
  - E. Provide Contractor with a valid copy of Subcontractor's Florida State License, including the G.C. number and FEI number.
  - F. Submit a list of suppliers to Contractor prior to commencement of Work.
  - G. Submit a schedule setting forth anticipated completion dates and milestones for the Work prior to commencing the Work.
  - H. Submit and disclose any long lead items to Contractor. A long lead item means an item that must be ordered more than six (6) weeks ahead of the time the item will be used in the Work.
  - I. Submit a Schedule of Values as provided in Paragraph 2.5 below.
  - J. Supervise each part of the Work at all times.
  - K. If demolition is to take place, protect all surrounding areas and protect persons and property in order to not to impede any work in adjacent work areas.

L. Attend a pre-construction meeting/walk-through of the Project site. Subcontractor shall receive 24 hours advance written and/or verbal notice of the meeting. Attendance at the pre-construction meeting is mandatory.

M. Request all necessary inspections and be present to meet with the inspector and perform all tests that may be required.

- 2.3 The Work performed by Subcontractor under the Subcontract shall be completed in strict accordance with the Contract Documents. The Work shall be performed subject to the final approval of Contractor, the Owner, the Architect and/or Engineer and their respective representatives, and their decision as whether the Work was performed in accordance with the Contract Documents shall be final.
- 2.4 Subcontractor is obligated to obtain and check all drawings and specifications. Subcontractor shall immediately notify Contractor of any discrepancies in writing. Subcontractor shall compare all drawings and verify all locations, measurements, quantities and figures before laying out the Work and will be responsible for any errors associated with same. When measurements are affected by existing conditions in the field at the Project site, Subcontractor shall take additional measurements, notwithstanding any scale or dimension set forth in the Contract Documents and, more specifically, the Plans and Specifications. Deviations from any dimension, location, quantity, or measurement in the Contract Documents shall not be permitted unless authorized by Contractor in advance of performing the Work and in writing.
- 2.5 Subcontractor, within five (5) calendar days of executing the Subcontract, shall submit a Schedule of Values allocated to the various portions of the Work of the Contract Documents, aggregating the Subcontract sum, subdivided in such detail as Contractor requires in order to accurately reflect Subcontractor's actual and necessary costs of performing the Work, and supported by such evidence as Contractor directs. No payments shall be due to Subcontractor until Subcontractor submits a Schedule of Values, and Contractor approves same. In applying for payment, Subcontractor shall submit statements based upon the Schedule of Values and shall use a payment request form, the form of which shall be approved by Contractor. In the event that Subcontractor fails to submit a Schedule of Values within the time specified herein, Contractor will furnish a Schedule of Values for Subcontractor to follow, and Contractor will deduct the expense of creating the Schedule of Values from the Subcontract price.
- 2.6 If a dispute arises between the Contractor and the Subcontractor regarding the scope of the Work, or the interpretation of the Plans and Specifications, and the Parties do not promptly resolve the dispute within a reasonable time, the dispute shall be submitted to the Architect and/or Engineer, whose decision thereon shall be final. In the interim, Subcontractor agrees to promptly perform all disputed Work so as not to delay the progress of the Work.

### **ARTICLE 3: ITEMS SUPPLIED BY CONTRACTOR**

- 3.1 The Contractor shall provide Subcontractor with the following:
- A. One (1) set of the Plans and Specifications referred to in Exhibit "A" in electronic and/or paper format.

## **ARTICLE 4: SUBMITTALS**

- 4.1 Before proceeding with ordering materials, submitting shop drawings, laying out and/or performing any portion of the Work, Subcontractor shall verify all field conditions and determine the location, condition and correctness of the same to assure the Work can be performed as intended and shall provide Contractor with immediate written notice of any condition which adversely impacts the Work. Subcontractor shall not perform any portion of the Work if the conditions on which that Work is to be performed is unsuitable, and Subcontractor shall bear all liability and responsibility for performing Work where the conditions on which the Work is to be performed are unsuitable. Failure by Subcontractor to detect and disclose in writing any such conditions prior to proceeding with ordering material, submitting shop drawings, laying out and/or performing any portion of the Work shall relieve Contractor, Owner, Architect and/or Engineer, and their respective representatives, from any responsibility for same, and Subcontractor shall, at its sole expense, make any changes in the Work and the subsequent Work of others caused by Subcontractor's failure to provide such written notice to Contractor. Subcontractor shall be solely responsible for laying out and performing its Work and shall be strictly responsible for the accuracy of the Work and for any loss or damage to Contractor or others by reason of Subcontractor's failure to lay out and/or perform the Work correctly.
- 4.2 Subcontractor shall submit three (3) hard copies and/or electronic sets of shop drawings, product data, samples and submittals required by the Subcontract and Contract Documents within five (5) calendar days of the execution of the Subcontract and in such time and sequence as to cause no delay in the Work or in the activities of Contractor or other Subcontractors. Subcontractor shall boldly identify in red "ALTERNATE" on each variation from the Contract Documents for any specific item. Failure to identify variations in accordance with the requirements of this paragraph shall certify that all items comply with the requirements of the Contract Documents. After Subcontractor identifies variations as required, variations must be approved in writing by Architect and/or Engineer and Owner in writing.
- 4.3 Subcontractor shall not perform any portion of the Work requiring submittal and review of shop drawings, product data, samples, or other similar submittals until the respective submittal has been reviewed and approved by Contractor, Owner, Architect and/or Engineer, and their respective representatives.
- 4.4 By submitting shop drawings, product data, samples, and, other similar submittals, Subcontractor represents that the Subcontractor has verified materials, field measurements, and field construction criteria related thereto, and has checked and coordinated the information contained. within such submittals with the requirements of the Work and of the Contract Documents.
- 4.5 Subcontractor shall not be relieved of responsibility for deviations from any of the requirements of the Contract Documents by the review of shop drawing, product data, samples, or similar submittals by Contractor, Owner, Architect and/or Engineer, or their respective representatives, unless Subcontractor has specifically informed them in writing of such deviations at the time of the submittal, and the deviation has been approved in writing by Contractor, Owner, Architect and/or Engineer, or their respective representatives. Subcontractor shall not be relieved of responsibility for errors and omissions in shop drawings, product data, samples, or other similar submittals by approval thereof.

- 4.6 When professional certification of shop drawings, or performance criteria of materials, systems, or equipment is required by the Contract Documents, the Contractor, Owner, Architect and/or Engineer, and their respective representatives, shall be entitled to rely upon the accuracy and completeness of such calculations and certifications. All certifications shall be signed and sealed by a professional engineer registered in the State of Florida.

#### **ARTICLE 5: SCHEDULING & DURATION OF WORK**

- 5.1 Subcontractor shall perform the Work in accordance with the schedule provided by the Contractor in Contractor's sole and exclusive discretion or as otherwise specifically directed by Contractor in its sole and exclusive direction. Subcontractor shall provide adequate manpower and supervision to perform in accordance with Contractor's schedule or as specifically directed by Contractor in its sole and exclusive discretion. Subcontractor shall bear all expenses of overtime work or work on nights and/or weekends, which may become necessary in order to perform as per Contractor's schedule or as specifically directed by Contractor in its sole and exclusive discretion. If the Subcontractor fails to perform the Work in accordance with Contractor's schedule, or as specifically directed by Contractor in its sole and exclusive discretion, Contractor shall have the right, but not the obligation, to perform the Work by any means whatsoever in order to bring the Work back to Contractor's schedule or as otherwise specifically directed by Contractor in its sole and exclusive discretion and to charge Subcontractor all costs associated with same.
- 5.1.2 Subcontractor shall be required to utilize Builder Trend, Buildtopia and/or Tradetopia, as directed by Contractor, for purposes of constructing the Project. Contractor shall provide access to whatever program Contractor designates. However, Subcontractor shall be responsible for payment of any start-up and/or monthly fees. Subcontractor's compliance with this paragraph shall be a strict condition precedent to Contractor's obligation to pay Subcontractor, and Subcontractor's failure to comply with this paragraph shall be a material breach of the Subcontract and shall entitle Contractor to the rights and remedies afforded herein and under Florida law.
- 5.2 The Work shall be commenced within \_\_\_\_\_ ( ) calendar days after receipt by Subcontractor of a Notice to Proceed and shall be completed within \_\_\_\_\_ ( ) calendar days from the date specified for commencement of the Work in the Notice to Proceed and in no event later than the date specified for completion of the Work set forth in the Initial Construction Schedule attached hereto as Exhibit "C." Time is of the essence with respect to the performance of the obligations under the Subcontract and the Contract Documents. The duration for the performance and completion of the Work is \_\_\_\_\_ ( ) calendar days.
- 5.3 Delays caused by Subcontractor's Work being condemned or rejected shall not be considered as a valid cause for extension of the time. In the event Subcontractor fails to complete the Work in accordance with the Contract Documents as set forth herein, Subcontractor shall pay, as liquidated damages, and not as a penalty, the sum of ONE-Hundred dollars (\$100) for each calendar day that the Work remains incomplete. The liquidated damages shall be deducted from the balance due Subcontractor. Should the liquidated damages exceed the sum due, or become due, Subcontractor shall be liable to the Contractor for the difference and shall pay Contractor the difference within three (3) calendar days of Contractor's demand for same. Contractor and Subcontractor agree that damages associated with any delays will be difficult,

if not impossible to calculate, that the liquidated damages amount set forth herein is reasonable, and that the liquidated damages amount is not a penalty. This clause shall not preclude Contractor from seeking any other damages to which Contractor may be entitled under the Subcontract or as a matter of law.

- 5.4 If Subcontractor is delayed in the performance of the Work due to causes not reasonably anticipated and which would otherwise entitle Contractor to an extension of time under the Prime Contract, Subcontractor shall furnish Contractor with written notice of the delay within three (3) calendar days of the event giving rise to the delay. If Subcontractor fails to furnish Contractor with such written notice, Subcontractor waives the claims and releases Contractor from any liability associated with same. Subcontractor shall cooperate fully and assist in the preparation of such claim. In no event shall Subcontractor be entitled to an extension of contract time or additional compensation in excess of that granted to Contractor by Owner under the Prime Contract.
- 5.5 Claims relating to time shall be made in accordance with Paragraph 12.3 herein. The claim shall precisely and exactly state which portion(s) of the Work was delayed, the number of days that the Project was delayed, the cause(s) and reason(s) for the delay, and the claim shall further show how the delay directly affected the critical path and completion of the Work. Subcontractor shall, regardless of the cause or reason of delay, continue to prosecute all of the Work, whether or not such Work is directly affected by said cause or reason and, with respect to such portion(s) of the Work so affected, shall take all measures to minimize the effect of the delay.
- 5.6 Only that portion of the delay that actually affects the critical path and the completion of the Work will be considered as a legitimate basis for any requested time extension.
- 5.7 Extensions of time shall be the Subcontractor's sole remedy for any and all delays. No payment or compensation of any kind shall be made to the Subcontractor for damages because of hindrance in the progress of the Work, or delay from any cause in the progress of the Work, whether such hindrances or delays are avoidable or unavoidable, reasonable or unreasonable, anticipated or unanticipated, or whether such delays are caused, in whole, or in part, by Contractor, Owner, the Architect and/or Engineer, and their respective representatives. Subcontractor expressly agrees that it will not make, and hereby waives and releases, any claim for damages resulting from any alleged delay, obstruction, or hindrance of the Work for any cause whatsoever, including, but not limited to, the aforesaid causes and agrees that Subcontractor's sole right and, remedy in the case of any delay, hindrance or obstruction in the progress of the Work shall be an extension of that time fixed for completion of the Subcontract Agreement. Contractor's exercise of its rights under the change order and/or claims clauses of the Subcontract, regardless of the extent or number of such changes and/or claims, shall not, under any circumstances, be construed as compensable delays, it being acknowledged that the Subcontract sum includes and anticipates any and all delays whatsoever from any cause, whether such delays are avoidable or unavoidable, reasonable or unreasonable, anticipated or unanticipated or whether such delays are caused, in whole, or in part, by Contractor, Owner, the Architect and/or Engineer, and their respective representatives.
- 5.8 In the event that a court of competent jurisdiction determines that the preceding provision is unenforceable for any reason, then Subcontractor shall be entitled to the sum of \$100.00 per day as liquidated damages for each day Subcontractor is actually delayed by the action and/or

omissions of Owner, the Architect and/or Engineer, and their respective representatives, changes in the Work, or by any other cause of delay which is attributable to Contractor, Owner, the Architect and/or Engineer, and their respective representatives, which is beyond the Subcontractor's control, avoidance or mitigation and for which Subcontractor is otherwise without fault or negligence. This provision contemplates anticipated and actual loss caused by any delay and the difficulty in proving such loss.

## **ARTICLE 6: SAFETY**

- 6.1 Subcontractor shall take all necessary safety precautions with respect to performance of the Work required by the Contract Documents, shall comply with safety measures initiated by the Contractor, Owner, the Architect and/or Engineer, and their respective representatives, as well as applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons and property in accordance with the requirements of the Contract Documents and the Prime Contract. Subcontractor shall report to the Contractor, within twenty-four (24) hours after the occurrence, any injury to an employee or agent of Subcontractor, which occurred at the Project site. Contractor, at Subcontractor's sole expense and without notice or defense may correct safety violations not immediately remedied by Subcontractor. Contractor shall have the authority to direct the Subcontractor and/or its personnel to comply with safety requirements. Subcontractor shall comply at all times with Contractor's Safety Program, a copy of which is attached hereto as Exhibit "D" and specifically incorporated herein by reference.
- 6.2 No action or inaction of the Contractor or its personnel shall be construed to make the Contractor liable and/or responsible for Subcontractor's safety program and/or implementation of safety at the job site.
- 6.3 Subcontractor will maintain an ongoing safety program in compliance with OSHA regulations and be responsible for the safety of each of its employees while working on the Project site. Subcontractor's employees shall wear shirts and long pants, and shall wear personal protective equipment in accordance with OSHA regulations. Subcontractor shall follow Contractor's clean-up and safety directions, and shall, at all times, keep the Project free from debris and unsafe conditions resulting from the Work keep the area in which Subcontractor is performing the Work broom clean prior to discontinuing Work each day. If Subcontractor fails to immediately commence compliance with the safety obligations required by the Contract Documents and/or law, or to immediately commence clean up duties after receiving written notice from Contractor, Contractor may implement and maintain such safety or clean-up measures without further notice to Subcontractor, and deduct the costs thereof from any amounts due or to become due to Subcontractor.
- 6.4 Subcontractor shall comply with all regulations and laws concerning the use of hazardous substances, including notifying any employees or other persons as required by law, and shall notify Contractor in advance of its intent to use such hazardous substances. In the event that Subcontractors encounters on the Project site material reasonably believed to be asbestos or PCB's which have not been rendered harmless, Subcontractor shall immediately stop work in the area and report the presence of said materials to Contractor in writing.
- 6.5 During such periods of time designated by the National Weather Service as a Hurricane Watch, Subcontractor shall take precaution for the securing of tools, equipment, and materials



as may be required. The entire Project and Project site shall be inspected by Subcontractor and all unsecured objects and appurtenances shall be securely fastened or removed.

- 6.6 Subcontractor shall not install, use, generate, manufacture, treat, handle, refine, produce, process, store or otherwise dispose of at any time while performing the Work on the Project substances, including, without limitation, asbestos or any substance containing asbestos and deemed hazardous under any Hazardous Material Law (defined below), the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances (“Hazardous Materials”) under any law relating to environmental conditions and industrial hygiene, including without limitation, the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. Sections 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Federal Water Pollution Control Act and Clean Water Act, 33 U.S.C. Section 1251-1387, the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f-300j, the Florida Resource Recovery and Management Act, Section 403.702, et seq., *Florida Statutes*, the Pollutant Discharge Prevention and Control Act, Sections 376.011-376.21, *Florida Statutes*, and all similar federal, state and local environmental statutes, ordinances and the regulations, orders, decrees now or hereafter promulgated, enacted, adopted, entered or issued (collectively, the “Hazardous Material Laws”). Subcontractor shall not undertake any activity on the Project which would cause: (i) the Project to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Project within the ambit of RCRA or any Hazardous Material Law; (ii) not release or threaten to release any Hazardous Material within the Project within the meaning of, or otherwise bring the Project within the ambit of CERCLA or SARA or any Hazardous Material Law; or (iii) discharge any Hazardous Material into any watercourse, body of surface or subsurface water or wetland, or cause the discharge into the atmosphere of any Hazardous Material which would require a permit under any Hazardous Material Law. Subcontractor shall not undertake any activity with respect to the Project which would cause a violation or support a claim under RCRA, CERCLA, SARA or any Hazardous Material Law. Subcontractor shall otherwise comply in all respects with all federal, local and state statutes, regulations, rules and ordinances relating to environmental contamination and pollution discharge while performing Work on the Project whether in effect on the effective date of the Subcontract, or enacted thereafter.
- 6.7 Subcontractor hereby agrees to unconditionally indemnify, defend, and hold Contractor and Owner harmless against any (i) loss, liability, damage, expense or claim arising from the imposition or recording of a lien, the incurring of costs of required repairs, clean up or detoxification and removal under any Hazardous Material Law with respect to the Project or liability to any third party in connection with any violation of a Hazardous Material Law; (ii) other loss, liability, damage, expense or claim which may be incurred by or asserted against the Contractor and/or Owner directly or indirectly resulting from the presence on or under, or the discharge, emission or release from or within the Project into or upon the land, atmosphere, or any watercourse, body of surface or subsurface water or wetland, arising from the installation, use, generation, manufacture, treatment, handling, refining, production, processing, storage, removal, clean up or disposal of any Hazardous Materials (as defined hereinabove) whether or not caused by Subcontractor, or any person and/or entity performing

Work on behalf of Subcontractor; and (iii) loss of value of the Project as a result of any such lien, clean up, detoxification, loss, liability, damage, expense or claim or a failure or defect in title occasioned by any Hazardous Material or Hazardous Material Law. This indemnification obligation is a separate and independent of the other obligations of Subcontractor under the Subcontract and shall survive the termination of the Subcontract and/or the completion of the Work.

## **ARTICLE 7: PROGRESS PAYMENT'S**

- 7.1 Based on approved applications for payment, Contractor shall pay the Subcontractor for the performance of the Work, subject to the conditions precedent stated in Paragraph 7. 2, and subject to modification as provided for Article 12 hereof, the total sum of \_\_\_\_\_ (\$ \_\_\_\_\_) (the "Subcontract Sum"). Payment will be in current funds and within fifteen (15) calendar days of Contractor receiving payment for the labor, services and materials furnished by Subcontractor and requested in the application for payment from the Owner.
- 7.2 It shall be an absolute condition precedent to any obligation or liability of the Contractor to the Subcontractor for progress and/or final payments for any Work performed by the Subcontractor that the Contractor receive payment from the Owner for such Work. In this regard, Subcontractor specifically agrees to assume the risk of non-payment from the Owner and further specifically agrees that it will look to the credit of the Owner for payment for all labor, services and materials furnished in connection with the Project. If the Owner has not paid the Contractor for any reason including, but not limited to, Contractor's or the Owner's inability to pay, insolvency, bankruptcy, or other financial problem, Subcontractor agrees that the Contractor shall not be liable to, nor indebted to Subcontractor, for payment for such Work.
- 7.3 On or before the 20<sup>th</sup> day of each month, Subcontractor shall submit to the Contractor a written application for payment on AIA Form G-702, G-703, or purchase order with the following,
- A. The value of the Work performed and the materials properly stored on site during the preceding month, from which Contractor shall deduct retainage of ten percent (10%)
  - B. All previous payments.
  - C. All approved and disputed change orders.
  - D. All Backcharges.
  - E. All Retainage.
- 7.4 Subject to Article 7.2, all approved applications for payment received by the Contractor on or before the 20<sup>th</sup> day of each month, less the retainage, back charges and disputed change orders, shall be paid by Contractor to the Subcontractor within thirty (30) calendar days of receipt by Contractor of payment for such Work by the Owner. Such monthly progress payments may, upon written approval by Contractor, include materials and supplies purchased by Subcontractor for the Work and properly stored at the Project site.

- 7.5 Contractor shall permit Subcontractor to obtain directly from the Architect and/or Engineer, and their respective representatives, information regarding the percentage of completion or the amount certified on account of Work performed by Subcontractor.
- 7.6 In the event that Subcontractor fails to pay and discharge when due any bills of any kind or nature incurred by Subcontractor in the performance of the Work, Contractor may, but is not obligated to, make all payments due at its discretion and deduct all payments made from the balance due Subcontractor under the Subcontract.
- 7.7 Subcontractor shall furnish Contractor with Original Partial Waivers and Releases of Lien in accordance with Chapter 713, *Florida Statutes*, in exchange for each monthly progress payment and a Final Waiver and Release of Lien in exchange for the final payment, the form of which shall also comply with Chapter 713, *Florida Statutes*. Contractor may also require Subcontractor to substantiate each application for payment by providing copies of paid bills and/or partial and/or final releases of lien from each and every sub-subcontractor, material supplier, renter of equipment or any other obligation for payment arising from the Subcontract. Contractor may also require Subcontractor to furnish a sworn list of the names of sub-subcontractors, material suppliers, renters of equipment and other vendors and the amount owed to each for each and every unpaid creditor for Work performed under the Subcontract and the Contract Documents.
- 7.8 Subcontractor hereby expressly agrees that in the event Subcontractor breaches the terms of this Subcontract, or any other contract that Subcontractor has entered into with Contractor, that Contractor may set off and withhold from Subcontractor any amounts due and owing under this Subcontract or any other contract entered into between Subcontractor and Contractor in order to cure any defaults in Subcontractor's performance, or lack thereof, of the terms and conditions of this Subcontract, or Subcontractor's defaults, performance, or lack thereof, of the terms and conditions of any other contract entered into between Subcontractor and Contractor.
- 7.9 In the event that the cost of labor and/or materials increase and such increase is industrywide and not caused by Subcontractor's acts and/or omissions, Subcontractor shall provide written notice to Contractor of the increase in such labor and/or materials and the potential impact on the cost of the Work being performed under the Subcontract within seven (7) calendar days of Subcontractor knowing of the price escalation. Subcontractor shall thereafter be entitled to submit a Change Order reflecting the increased costs of performing the Work associated with the increase in labor and/or material costs which Change Order will be submitted to the Owner for consideration, evaluation and approval in accordance with the terms and conditions of the Subcontract and the Prime Contract.

#### **ARTICLE 8: FINAL PAYMENT**

- 8.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be paid by Contractor to Subcontractor when Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract and the Contract Documents and the Owner, Architect and/or Engineer, and their respective representatives, have approved Subcontractor's Work.
- 8.2 Before issuing final payment, Subcontractor shall, submit evidence satisfactory to Contractor that all payroll, bills for materials and equipment and all known indebtedness connected with the Subcontractor's Work have been satisfied. Concurrent with final payment, Subcontractor

shall execute and deliver to Contractor a Satisfaction and Release of Lien upon Final Payment holding Contractor harmless from any and all claims arising out of, or otherwise relating to, the Work performed by Subcontractor under the Subcontract.

- 8.3 Contractor and Subcontractor hereby expressly acknowledge and agree that Contractor's payment bond surety, if any, is a third-party beneficiary of the conditional payment clauses set forth herein with regard to both progress payments and final payment. In the event that a claim is asserted by Subcontractor against the payment bond surety by way of any court action, or through any other forum for dispute resolution, Subcontractor agrees that the surety may affirmatively assert as a complete defense to non-payment by principal and surety pending the occurrence of payment by the Owner to the Contractor.
- 8.4 Contractor shall not be required to forward Subcontractor's application for final payment to Owner until Subcontractor has submitted to the Contractor all of the following:
- A. An affidavit that all payrolls, bills for materials and equipment, and all known indebtedness in connection with Subcontractor's Work for which the Owner, his property, the Contractor, or the Contractor's surety might in any way be liable have been paid or otherwise satisfied;
  - B. Consent of surety to final payment, if bonds have been furnished;
  - C. Other data if required by the Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner.
  - D. All documents required to be submitted by Subcontractor to Contractor in accordance with the Subcontract and Contract Documents regarding progress payments;
  - E. Evidence of continued insurance coverage as required by the Subcontract Contract Documents and applicable law;
  - F. Completed as built drawings in a form acceptable to Owner and Contractor;  
and
  - G. All maintenance manuals, warranties and inspection certificates from Subcontractor, its sub-subcontractors, material suppliers and equipment suppliers.

## **ARTICLE 9: INSURANCE**

- 9.1 Prior to starting the Work, Subcontractor shall obtain the following insurance coverage:
- A. Statutory Workers' Compensation and Employer's Liability Insurance without exclusion of employees that are actively involved in the work on the jobsite. Such insurance shall include, at a minimum, \$1,000,000.00 for each accident, \$1,000,000.00 in coverage for disease for each employee, and \$1,000,000.00 disease policy limit. Subcontractor specifically agrees to waive any and all rights to

subrogation against Contractor and its insurance carriers in connection with any claims that are covered by Statutory Workers' Compensation and Employer's Liability Insurance. Subcontractor's sub-subcontractors and any employee leasing company shall maintain the same coverage with equal or greater limits.

- B. Bodily Injury Liability Insurance with limits of liability not less than \$1,000,000.00 per occurrence, including protective, contractual and completed operations and products limits of not less than \$2,000,000.00 aggregate. This insurance shall be primary and non-contributory with respect to any other insurance coverage including Contractor, Owner and any other indemnities required under the Prime Contract. Subcontractor's contractual liability coverage must not contain any restrictions for assumption of another's negligence, nor deletion of coverage for contractual liability. Subcontractor's coverage shall not exclude punitive damages.
- C. Broad form property damage liability insurance with limits of liability not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate, including protective, contractual, completed operations and products limits. This insurance shall be primary and non-contributory with respect to any other insurance coverage including Contractor, Owner and any other indemnities required under the Prime Contract. Subcontractor's contractual liability coverage must not contain any restrictions for assumption of another's negligence, nor deletion of coverage for contractual liability. Subcontractor's coverage shall not exclude punitive damages.
- D. Subcontractor shall carry underground explosion and collapse hazard liability insurance with limits of not less than \$2,000,000.00 aggregate if the Work involves excavation, trenching or drilling. This insurance shall be primary and non-contributory with respect to any other insurance coverage including Contractor, Owner and any other indemnities required under the Prime Contract. Subcontractor's coverage shall not exclude punitive damages.
- E. Subcontractor shall carry automobile liability insurance applicable to owned, hired and non-owned vehicles in the amount of \$1,000,000.00 combined single limit. This insurance shall be primary and non-contributory with respect to any other insurance coverage including Contractor, Owner and any other indemnities required under the Prime Contract.
- F. Contractor and Owner shall be named as Additional Insureds on Subcontractor's General Liability Insurance Policy, and Subcontractor shall submit proof of same in the form of an appropriate endorsement, including, but not limited to, a CG 2010 11/85 endorsement or the equivalent for ongoing and completed operations, prior to commencement of the Work. Subcontractor's insurances shall be primary and non-contributory with respect to any other insurance coverage including Contractor, Owner and any other indemnities required under the Prime Contract.
- G. All insurance companies must have an " A.M. Best" rating of A- or better, or financial size category of VII or higher.

- 9.2 Subcontractor's General Liability coverage shall be written on an occurrence basis and shall include coverage, at a minimum, for premises/operations, employees as insureds, explosion, collapse and underground, broad for contractual (including personal injury), products and

completed operations, independent contractors and broad form property damage and personal injury. Coverages shall be maintained without interruption from the date of commencement of Subcontractor's Work and shall continue to be maintained after final payment until all contractual and statutory time limits, including the statute of repose, have expired. Subcontractor's coverage shall not exclude punitive damages.

- 9.3 Certificates of insurance acceptable to Contractor shall be filed with the Contractor prior to commencement of the Work. These certificates and the insurance policies required by the Article 9 shall contain a provision that coverages afforded under the policies will not be canceled, allowed to expire, or modified, unless at least 30 days prior written notice has been given to Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required by Paragraph 8.4. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Subcontractor immediately upon receipt by Contractor of such information.
- 9.4 Contractor and Subcontractor waive all rights against each other and any of their or the other's subcontractors, sub-subcontractors, material suppliers agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as fiduciary. Subcontractor shall require of Subcontractor's sub-subcontractors, material suppliers, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of all parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity, even though that person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

#### **ARTICLE 10: BONDS**

- 10.1 Prior to starting the Work, the Subcontractor shall provide the Contractor with the following bond(s):
- A. [INSERT PAYMENT/PERFORMANCE BONDS AS NECESSARY]

#### **ARTICLE 11: WORKING CONDITIONS**

- 11.1 The following working conditions prevail:
- A. This is a non-union Project.
- B. The Subcontractor shall cooperate with the Contractor in scheduling the Subcontractor's work and the work of other subcontractors
- C. The Subcontractor shall communicate with other subcontractors whose work may affect it so as to promote harmony in the workplace. In the event Subcontractor, its sub subcontractors, material suppliers, agents, and/or employees, commit or allow to be committed any act or acts or does or allows to be done anything which tends to create or creates disharmony, a work slowdown, work stoppage, or strike, Contractor

shall have the absolute right to immediately cancel the Subcontract and complete same in accordance with the termination provisions as set forth in Article 15.

D. Unless otherwise provided in the Subcontract, Contractor shall furnish and make available at no cost to the Subcontractor the following temporary facilities and services:

1. All temporary facilities as required to perform Subcontractor's Work.

E. Subcontractor shall take reasonable precautions for safety of, and shall provide protection to prevent damage, injury or loss to: (1) employees performing the Work or located on the Project site and other persons and/or property that may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on/or off the Project site, under the care, custody or control of the Subcontractor or the Subcontractor's sub-subcontractors, materials suppliers, employees and/or agents; and (3) other property at the Project site or roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Subcontractor shall be responsible for all materials to be installed on the Project prior to installation.

## **ARTICLE 12: CHANGES**

12.1 The Contractor may make changes in the Work by issuing modifications to the scope of Subcontractor's Work. Upon receipt of any modification to the scope of Subcontractor's Work issued subsequent to the execution of the Subcontract, Contractor shall notify Subcontractor of the modification. Unless otherwise directed by Contractor, Subcontractor shall not thereafter order materials or perform Work, which would be inconsistent with the changes made by the modification to the scope of Subcontractor's Work.

12.2 Subcontractor may be ordered in writing by Contractor, without invalidating the terms and conditions of the Subcontract, to make changes on the Work consisting of additions, deletions, or other revisions, including those required by modifications to the Prime Contract or the Subcontract issued subsequent to the execution of the Subcontract, the Subcontract Sum and the Subcontract Time being adjusted accordingly. Subcontractor, prior to the commencement of such changed or revised Work, shall submit to Contractor written copies of a detailed claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work within the time specified in and in a manner consistent with the requirements of the Subcontract and the Contract Documents. Subcontractor shall proceed with the changed. Work as directed by Contractor while such claim for adjustment is being determined as provided for in the Subcontract and the Contract Documents.

12.3 Subcontractor shall make claims promptly to the Contractor for adjustments to the Subcontract Sum and Subcontract Time in accordance with the Subcontract and the Contract Documents. A claim which will affect or become part of a claim which Contractor is required to make under the Contract Documents within a specified period of time or in a specified manner shall be made in sufficient time to permit Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor no less than seven (7) calendar days preceding the time by which Contractor's claim must be made. Failure of Subcontractor to make a claim within the time specified herein shall constitute a waiver of Subcontractor's rights and a release of bind the Subcontractor to the same

consequences as those to which the Contractor is bound under the Prime Contract. Receipt of payment from the Owner to the Contractor for extra work and any other claims shall be an absolute condition precedent to the right of Subcontractor to receive payment from the Contractor for such costs, damages or claims. Subcontractor acknowledges the risk of non-payment of its claims and agrees to look to the credit of the Owner for payment of its claims. Subcontractor shall provide any certification required by the Subcontract Documents for change orders and claims, including, but not limited to, all pricing data. Subcontractor shall indemnify and hold Contractor harmless from and against any costs, losses, damages or expenses, including attorneys' fees, of Contractor in connection with the issuance of any certification by Contractor on behalf of, or otherwise related in any way to the change order, claim, or pricing data of Subcontractor. Subcontractor shall permit Contractor to audit all accounting, estimating, pricing, daily reports, correspondence and job records of Subcontractor in connection with both the Work and any change orders and/or claims.

- 12.4.1 In the event Subcontractor is entitled to additional compensation for claims for changes in the Work in accordance with the Subcontract and the Contract Documents, and the Owner, Contractor, and Subcontractor do not agree as to adjustment in compensation and/or time, Subcontractor shall be entitled only to recover its actual and necessary costs of performing the additional Work as determined by an audit of the Subcontractor's records, plus an agreed-upon reasonable mark-up of 15% for overhead and profit, or the amount which the Contractor is paid by the Owner, whichever is less.
- 12.5 Subcontractor shall be entitled to extensions of time for delays as set forth in Article 5. Requests for extensions of time shall be submitted in writing to the Contractor within five (5) calendar days after the occurrence of the delay, or Subcontractor waives any right to obtain the extension of time and releases Contractor for any liability associated with same.

### **ARTICLE 13: WARRANTY**

- 13.1 Subcontractor warrants to Contractor, Owner, Architect and Engineer, that all materials and equipment furnished under the Subcontract and the Contract Documents will be good of quality and new unless otherwise required or permitted by the Subcontract and Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted by the Subcontract and the Contract Documents and that the Work will strictly conform with the requirements of the Subcontract and the Contract Documents. This warranty shall be in addition to, and not in limitation of, any other warranty or remedy required by law, by the Subcontract, or by the Subcontract Documents.
- 13.2 Subcontractor warrants the Work against all deficiencies and defects in materials or workmanship as called for in the Prime Contract. Whenever Subcontractor is furnishing materials or equipment as to which the manufacture provides a standard manufacturer's warranty, Subcontractor shall secure such warranty and deliver same to Contractor prior to final payment. All manufacturer's warranties are not in lieu of Subcontractor's general warranty obligations herein. Subcontractor further agrees to execute any special guarantees or warranties that shall be required for the Work prior to final payment.
- 13.3 Subcontractor shall comply with any statutory warranties applicable to the Project, as well as those warranties and procedures set forth herein and in the Warranty and Warranty Procedures attached hereto as Exhibit "E" and specifically incorporated herein by reference.



## **ARTICLE 14: INDEMNIFICATION**

- 14.1 To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Contractor, Owner, Architect and Engineer, and their respective, officers, directors, shareholders, partners, employees, agents, or servants (the "Indemnitees") from and against any and all claims, losses, damages, causes of action, suits and liability of every kind including all expenses of litigation, court costs, and attorneys' fees, caused in whole, or in part, by Subcontractor's Work, as well as any acts, omissions, or defaults by Subcontractor, its sub-subcontractors, materialmen, or agents, of any tier, or their employees, arising out of the Subcontract and/or the Subcontractor's Work. This clause specifically excludes any claims and/or damages against any of the Indemnitees resulting from such Indemnitee's gross negligence, or willful, wanton or intentional misconduct, or for statutory violation or punitive damages, except where such statutory violation and/or punitive damages are caused by and/or result from the acts and/or omissions of the Subcontractor, its sub-subcontractors, materialmen, or agents of any tier, or their employees. Subcontractor agrees that the indemnification agreement in this Paragraph 14.1 means that Subcontractor shall indemnify and hold harmless the Indemnitees even when the negligence of the Indemnitees causes or contributes or is alleged, to have caused or contributed in whole or in part to the incident causing the loss or damages claimed. The Parties agree that one percent (1%) of the Subcontract Sum is paid as specific consideration for the foregoing indemnification, that said amount bears a reasonable commercial relationship to the Subcontract and that this indemnification obligation shall be limited to One Million and 00/100 (\$1,000,000.00). The Parties expressly agree that this provision satisfies the requirements of Section 725.06, Florida Statutes, and that the indemnification obligations contained herein are otherwise valid and binding upon Subcontractor. The indemnification obligations contained herein shall not be restricted in any way by any limitation on the amount and/or type of damages, compensation, or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of Subcontractor or of any third party to whom Subcontractor may subcontract a part or all of the Work.

## **ARTICLE 15: CONTRACTOR'S REMEDIES**

- 15.1 In the event of a breach of the Subcontract and/or Contract Documents by Subcontractor, Contractor shall hand-deliver, fax or forward by U.S. Certified Mail to Subcontractor a written notice of default. Should Subcontractor fail within forty-eight (48) hours after receipt of written notice of default fail to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any of its rights or remedies contained herein or as a matter of law, shall have the right to any or all of the following:
- A. Contractor may exercise all of the rights and benefits of Subcontractor under any contract and/or agreement with any sub-subcontractors or material suppliers entered into in connection with the Work, including, but not limited to, the right to make payments to and employ all sub-subcontractors and material suppliers, and obtain materials previously manufactured or fabricated for incorporation in the Work. All warranties and guarantees of any sub-subcontractors and material suppliers to Subcontractor shall inure to the benefit of Contractor. Contractor shall charge the costs of securing performance of the Work by Subcontractor's sub-subcontractors and

material suppliers to Subcontractor, which shall be liable for the payment of same, including Contractor's overhead, profit, supervision, consultants' fees and attorneys' fees.

- B. Contractor may supply such number of workers and quality and quantity of materials, equipment and other facilities as Contractor deems necessary for the completion or correction of the Work, or any part thereof, which Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to Subcontractor, which shall be liable for the payment of same, including reasonable overhead, profit, supervision, consultants' fees and attorneys' fees.
- C. Contractor may contract with one or more additional contractors to perform such part of the Work as Contractor shall determine will provide the most expeditious completion or correction of the Work, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same, including reasonable overhead, profit, supervision, consultants' fees and attorneys' fees.
- D. Contractor may withhold payment of any monies due Subcontractor pending corrective action. To the extent required by and to the satisfaction of Contractor and/or the Owner. If Contractor considers that the monies withheld are insufficient to cover all Subcontractor's liabilities under the Subcontract and the Contract Documents, then Subcontractor reserves its right to assert a claim against Subcontractor's Performance Bond, if any.
- E. In the event of an emergency affecting the safety of persons and/or property, Contractor may proceed as provided above without notice to Subcontractor.
- F. Contractor may terminate the Subcontract as provided in Paragraph 15.2

15.2 If subcontractor fails within two (2) calendar days of receipt of the notice issued pursuant to Article 15.1 to commence and satisfactorily continue correction of any default with diligence and promptness, then Contractor may, in lieu of, or in addition to, all remedies provided to Contractor under the Subcontract, the Contract Documents, and applicable law, terminate the Subcontract and assume any and/or all of Subcontractor's subcontracts, agreements and/or purchase orders with Subcontractor's sub-subcontractors, materials suppliers and/or vendors. All costs incurred by Contractor in performing Subcontractor's Work under these Subcontract Documents, including, but not limited to, overhead and profit of 15%, supervision, consultants' fees and attorneys' fees shall be deducted from and remaining amount due or to become due Subcontractor, in addition to any other damages that may be incurred by Contractor as a consequence of Subcontractor's breach of the Subcontract and/or Contract Documents. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Sum. Subcontractor's warranty and indemnification shall survive the termination of the Subcontract.

#### **ARTICLE. 16: SUBCONTRACTOR'S REMEDIES**

16.1 The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to Contractor as Contractor may terminate the Prime Contract with the Owner, or for nonpayment of amounts due under the Subcontract for ninety (90) days or longer. In the event of such termination by Subcontractor for any reason

which is not the fault of the Subcontractor, its sub-subcontractors, material suppliers or their agents or employees or the persons performing portions of the Work under any contract or agreement with Subcontractor, Subcontractor shall be entitled to payment for Work performed in accordance with the Subcontract and Contract Documents and accepted and paid for by the Owner. Any claims or demands made pursuant to this section shall be subject to the condition precedent stated in Paragraph 7.2, and Subcontractor acknowledges the risk of non-payment and agrees to look to the credit of the Owner in the event of non-payment.

#### **ARTICLE :17: NOTICES**

- 17.1 The delivery of all documents and notices required or authorized by the Subcontract shall be made by facsimile and/or certified mail, return receipt requested, to the addresses of the respective parties as set forth on Page 1 of the Subcontract. Facsimiles will be deemed delivered on the date they are received. Certified letters will be deemed received on the date specified in the return receipt.

#### **ARTICLE 18: FEES, PERMITS, LOCAL LAWS**

- 18.1 Subcontractor shall procure at its own expense all required permits and licenses necessary for the performance of the Work and shall pay all fees, taxes, tax increases, assessments and expenses of whatever kind and nature that may be assessable under the Subcontract and the Contract Documents.
- 18.2 Subcontractor shall comply with federal, state and local laws, social security acts, unemployment compensation acts and worker's or workmen's compensation acts insofar as same as applicable to the performance of the Subcontract and the Contract Documents.

#### **ARTICLE 19: CLEANUP**

- 19.1 Subcontractor shall keep the Project site clean from accumulation of waste materials and rubbish. At the completion of the Work, Subcontractor shall clean to the satisfaction of Contractor all dirt, marks and similar markings from walls, ceilings, doors and fixtures deposited or placed thereon as a result of the prosecution of the Work. If Subcontractor fails or refuses to clean the Project site as directed, Contractor shall have the right to clean said debris or proceed with said cleaning or repair and charge Subcontractor with all costs incurred by Contractor and deduct said amount from the balance due Subcontractor.
- 19.2 Upon completion of the Work, Subcontractor shall remove all of its tools, materials, equipment and other articles from the Project site. Otherwise, Contractor, at its option and without waiver its rights, may, upon seven (7) calendar days written notice, treat all property as abandoned.

#### **ARTICLE 20: COMMUNICATION WITH OWNER**

- 20.1 Subcontractor shall not have direct communication with the Owner or the Owner's representative(s). If Subcontractor has direct contact with the Owner or the Owner's representative, either verbal or written, it shall be considered a material breach of the Subcontract. All information, including costs associated with the Subcontract, shall be confidential and not be released either verbally or in written form to any third party without

the express written consent of Contractor. Releasing any information pertaining to the Subcontract shall be considered a material breach of the Subcontract.

- 20.2 The information obtained by Subcontractor while providing labor, services and materials regarding Contractor's prices and its agreement with Subcontractor is confidential, and it is essential to the operation of the Contractor's business that such information not be disclosed to the Owner or any other third party without the express written authorization of Contractor. Subcontractor, therefore, agrees that while providing labor, services and materials to Contractor, and at any time thereafter, Subcontractor will make no disclosure of any kind, directly or indirectly, of or concerning any such confidential information to the Owner or any third party without the express written consent of Contractor.
- 20.3 Subcontractor agrees that, in the event of violation of Article 20, Subcontractor shall be entitled to immediate injunctive relief against Subcontractor in a court of competent jurisdiction.
- 20.4 In the event that Contractor is required to institute legal action in connection with performance, breach or enforcement of this Article 20, Subcontractor hereby expressly waives its right to seek and/or demand an injunction bond.

#### **ARTICLE 21: MISCELLANEOUS**

- 21.1 Contractor shall not be responsible for the loss or damage to Work performed, or materials, tools and equipment stored on the Project site by the Subcontractor during construction.
- 21.2 All laborers employed by Subcontractor on the Project site shall be subject to Contractor's approval and, in the event Contractor finds fault with any laborer for any reason whatsoever, said laborer shall be immediately removed from the Project site and replaced at Subcontractor's sole and exclusive expense.
- 21.3 Subcontractor shall not be allowed to place any signs on the Project in order advertise that Subcontractor is working on the Project.
- 21.4 Subcontractor shall not assign or transfer the Subcontract or any interest herein without the prior written consent of Contractor. Subcontractor agrees that if any part of the Work included in the Subcontract is assigned to third parties, Subcontractor will ensure compliance with the Subcontract and the Contract Documents by such third parties and that the Subcontractor will execute written agreements with such third parties specifically incorporating the terms and conditions of the Subcontract and Contract Documents by reference.
- 21.5 Subcontractor shall sign and return one (1) copy of the Subcontract to the office of Contractor within five (5) calendar days from the date of the Subcontract is delivered to Subcontractor without change, or the Subcontract may, at the option of Contractor, be terminated and declared null and void.
- 21.6 If any portion of the Subcontract is deemed to be invalid and unenforceable in any court of competent jurisdiction, the remaining provisions of the Subcontract shall remain in full force and effect.

- 21.7 Nothing contained in the Subcontract is intended, or shall be construed, to confer upon or give any person, firm or corporation, other than the Parties hereto, their parents, subsidiaries, affiliates, and assigns, any rights and/or obligations under or by reason of the Subcontract.
- 21.8 This Subcontract shall be governed and construed in accordance with the laws of the State of Florida, without regard to conflicts of law principles. Any and all claims arising out of, or otherwise relating to the Subcontract and Contract Documents shall be determined by a court of competent jurisdiction located in Palm Beach County, Florida, and venue for any such claims shall be Palm Beach County, Florida. The Parties hereby knowingly and voluntarily submit to the personal jurisdiction of the courts of Palm Beach County for any and all claims arising out of, or relating to the Subcontract and the Contract Documents. The Parties hereby knowingly, intelligently and voluntarily waive any and all rights to a trial by jury for any and all claims arising out of, or relating to the Subcontract and the Contract Documents.
- 21.9 The prevailing party in any action to enforce the terms and conditions of the Subcontract and the Contract Documents shall be entitled to its reasonable attorneys' fees and costs through appeal.

ENTERED into on the date above first written.

JNS CONTRACTING FLORIDA, LLC

[SUBCONTRACTOR]

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_