
SUBCONTRACT AMOUNT:
See Paragraph 1.4 Section 1)

\$000,000.00

Date: 00/00/08

SCOPE OF WORK: 1-16

See 1.3 and exhibit "A & B"

CONSTRUCTION SUBCONTRACT ©

This Subcontract is made effective and entered into as of this date: by and between Developer/Contractor:

Developer: D C CONSTRUCTION MANAGEMENT LLC (CONSTRUCTION MANAGER)

Mishawaka, Indiana
(517) 861-1890 Telephone Number
(517) 540-9778 Facsimile Number

and

Subcontractor Information: Subcontractor Name:
Subcontractor St. Address:
City, State and Zip Code:
Telephone number:
Facsimile number:
Mobile telephone number:
Electronic mail address:
Authorized agent 1:
Authorized agent 2:
Sub Job-site foreman:
Competent Person:

- Federal Tax Payers. I.D.# *(see exhibit "G")*:
- Structure of Business: *Incorporated, Sole proprietor, Partnership, other explain.*
- State of Incorporation:
- Is this Subcontractor registered to perform Work at the property location? Certificate of Insurance has been acquired? (No Work is to begin until a properly executed Certificate Of Insurance and W-9 form has been received at the office of Contractor.)
- Nature of business generally performed by this Subcontractor:

Instructions to Subcontractor:

- These Instructions are a part of the Subcontract by and between Contractor and Subcontractor. The contract requirements set forth herein are specific to Subcontractor. They also are representative, in part, of the terms and conditions of the Prime Contract between Contractor, DC Construction Management LLC and Owner, Name of developer LLC. If, in the opinion of Contractor, terms and conditions of this Subcontract need further clarification or explanation, then such clarifications and explanations will be attached to and become a part of this Subcontract as part of an Addendum issued at that time. No changes will be allowed to the terms and conditions of this Subcontract except by such addendum.
 - Contractor; DC Construction Management LLC. Being bound by contract to the Owner; Name of developer LLC, shall be held fully responsible for the performance of Subcontractor hereunder and shall be afforded no special relief from non-performance of the Work. With regard to any additional or change work requested hereunder by Contractor or Subcontractor, or in the event that the Owner requests changes to the Work, Contractor must bid such additional Work to the Owner and present that cost to the Owner for approval. If Work is deficient and/or unacceptable for any reason, the Owner will not offer relief to Contractor, and therefore neither will Contractor to Subcontractor.
 - The award of the Subcontract to Subcontractor is based, in part, on Subcontractor's represented ability to aggressively perform the Work in strict accordance with the terms and conditions of the Contract Documents, to include the project plans and specifications and this Subcontract and to perform the Work within the time constraints allowed therein. Subcontractor represents that it has the ability to staff project management, provide qualified onsite supervision and manpower for the Project in such a way as to ensure that Subcontractor is able to timely and properly perform work tasks at multiple building modules at the work site in sequence and as demanded by the onsite jobsite superintendent.
 - **Time is of the essence of this Subcontract.** Subcontractor agrees that it will perform its work in accordance with the Project Schedule as spoken or written and any revisions thereto as may be issued or directed by Contractor from time to time, and to work diligently to maintain that Project Schedule. Subcontractor understands and agrees that the completion of the Work and any milestones necessary thereto, may require Subcontractor to furnish additional resources or manpower than originally contemplated by Subcontractor in order to complete the Work in a timely manner consistent with the original and/or adjusted Project Schedule pertaining to this scope of work in workdays allowed for completion of tasks as set forth in Exhibit "D" page 23 attached hereto. Subcontractor commits that it will furnish the necessary labor, in the form of additional or increased crews and manpower, resources and supervision necessary to maintain the Project Schedule and to work in multiple sequences or multiple
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buildings concurrently in order to do so. In the event that Subcontractor lacks the manpower, resources or resources necessary to meet the Project Schedule, it is the responsibility of Subcontractor to so advise Contractor prior to executing this Subcontract. In the event that the subcontractor fails to supply adequate work forces at anytime and in accordance to the rules governing written notice thereof, the Contractor reserves the right to supplement Subcontractors workforce and deduct any costs arising from such action, from monies owed to the subcontractor. The specifics of supplementation are outlined elsewhere in the contract documents. See Article 1 section 1.21 page number 7 and Article 2 section 9 page 16.

- The Subcontract provides for the imposition by Contractor of penalties (see Article 1 section 1.20 page 6 Liquidated damages) for non-performance by Subcontractor. Subcontractor is bound by the terms and conditions of the Agreement between Contractor and Owner that apply to or affect the Work hereunder, including those provisions addressing time and quality of performance. As such, Subcontractor will be subject to a reduction of the Subcontract amount and/or a claim for damages from Contractor in such an amount as will be necessary to make Contractor whole for any costs, damages or penalties incurred or suffered by Contractor as a result of Subcontractor failing to meet any performance milestones, deadlines or posted, verbalized or issued written schedules, and any updates or revisions thereto as made by Contractor.
 - This is a performance based Subcontract with real-time constraints and specific penalties for non-performance. As such, Contractor reserves the right to strictly enforce any and all time deadlines and performance goals required of Subcontractor.
 - Any minor drafting or scrivener mistakes, errors and omissions made within the text or language of a document or correspondence will be considered to be non-material and shall not impact or change the overall meaning or intent that is being conveyed. Should Subcontractor remain in doubt as to the particular meaning or intent conveyed by such document or correspondence, as written, then Subcontractor immediately should seek such written clarification from Contractor, as necessary.
 - Contractor/owner must approve all change orders in advance. All change orders must be in writing before any change work commences. In the event that such change work cannot be performed for a Lump Sum amount then Subcontractor must receive a change order that is written with a guaranteed maximum amount or a "not to exceed" amount for all labor and materials required for the work.
 - Any changes in work materials or methods must be addressed in writing and a no cost or deductive change order issued. No work is to be performed that varies from the contract documents in the absence of a written change order.
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Contractor and Subcontractor agree as follows:

ARTICLE 1 of 2 – GENERAL INFORMATION AND DEFINITIONS (condensed), BOILER PLATE SUBCONTRACT:

This Subcontract pertains to the following name and geographical location:

1.1 Project: Apartment/Project Name: Name:
Location Address: Address:
City, state, and Zip Code: City State Zip

1.1.1 Job Site Information: Developers Name:
Developers Management Co.:
Project Managers Name:
Superintendents Name:
Assistant Superintendents Name:
Job Location Street Address:
City, State and Zip Code:
Job-Site Telephone:
Job-Site Facsimile:
E-mail address:

1.2 Owner Information: Owner name:
Mailing address:
City, State and Zip Code:
Owner’s Representative:
Owner’s Rep. Telephone:
Owner’s Rep. Facsimile:

1.2.1 Lender: Name of Lender:

1.2.2 Architect: Name of Architectural Firm:
Address:
City, State and Zip Code:
Telephone:
Facsimile:
Project Manager:

1.2.3 Civil Engineer: Name of Engineering Firm:
Address:
City, State and Zip Code:
Telephone:
Facsimile:
Project Manager:

1.2.4 **Authorized Agents for Contractor.** The Owner of the Construction Company (Contractor); Mr. Joe Coyler, is the authorized agents to negotiate, enter into and sign change orders, proposals or other contractual agreements for and on behalf of Contractor and owner. **No other Contractor personnel or representatives acting on its behalf, unless specifically mentioned herein, are authorized to negotiate, enter into or assign Work on behalf of Contractor.** Discussions, inquiries and proposals concerning special arrangements or exceptions to the above, or contract disputes, should be addressed to one of the aforementioned authorized agents for Contractor (Article 1 Section 1.2 owner information). Contractor’s Construction Administrators and/or Project Managers are authorized to solicit bids, formulate contractual agreements, and negotiate Work on behalf of Contractor subject to the approval of Contractor’s above-mentioned agents, but they are not authorized to sign agreements, proposals or change orders to this or any other Subcontract. See also the provisions of Section a Article 6.8 hereof. The jobsite superintendent is responsible for scheduling work, coordination of trades and the overall direction of the work as it is performed in actuality. The jobsite superintendent has full authority to make jobsite decisions, and to recommend corrective action to the owner regarding disputes.

1.2.5 **Plans and Specifications.** The Plans and Specifications (the “Specifications” as enumerated in Exhibit “S”) for Subcontractor’s Work have been examined and accepted by Subcontractor prior to the execution of the Subcontract and are expressly made a part hereof. Manufacturer’s and material supplier’s recommendations and specifications for installation of equipment and materials shall be considered as incorporated in such Specifications as to all equipment and materials to be used, applied and installed, and are to be strictly followed by Subcontractor unless such recommendations and specifications are in direct conflict with the Specifications, in which event Subcontractor immediately shall bring such conflict to the attention of Contractor’s authorized agents for resolution. In the event of discrepancies, the most costly and stringent solution shall apply.

1.3 Subcontractor’s Work: The Work of Subcontractor is specifically and additionally identified in Exhibit “A”, “ **General Scope of Work**”, and addendum 1 exhibit “B”, “**Scope of work**” attached hereto and made a part hereof. Subcontractor agrees to furnish, provide and pay for any and all labor, tools, fasteners, equipment, material, supplies, utilities, transportation, and supervision, together with any and all taxes, permits, bonds, fringe benefits and expenses related thereto, necessary to perform the Work. Subcontractor shall perform the Work described herein in a good and workmanlike manner, to the highest standards of quality, fit and finish

available, and in accordance with the Plans and Specifications as outlined in Exhibit "S" attached hereto and made a part hereof. If Work is to be performed on a labor basis only the Subcontractor's Work shall include the work described in Addendum No. 2 attached hereto and made a part hereof, and specifically shall include all labor, supervision, tools, fasteners, and related taxes, permits, bonds, fringe benefits and expenses related thereto. The work includes all items routinely considered a responsibility of this trade, The scope of work is not designed to be an all inclusive document but rather a general and vague description of work to be performed containing "special" notes or comments or "pet peeves" as the Contractor attempts to coordinate work as it may be interrelated or duplicated with the work of others from time to time. In the event that discrepancies are discovered in the scope of work the most stringent solution must always be assumed, whether verbiage to that effect is found within the contract documents or work in question is generally accepted as provided by this trade.

1.4 Subcontract Amount:

1.4.1 Tax Responsibility:

The Subcontract Amount includes all Municipal, State, County, and Federal taxes, assessments and charges imposed by law, on any and all labor performed, materials, furnished or services rendered hereunder, including but not limited to sales taxes, use taxes, personal property taxes and employee taxes, arising out of the acquisition or furnishing or installing by Subcontractor of material, equipment, or any kind of personal property, or the furnishing of labor and services in connection with the Work. Where the law requires any tax to be stated and charged separately, the total of all items included within the Work and any taxes thereon shall not exceed the Subcontract Amount stated herein. Any bid or invoice submitted to the owner for payment as a part of this subcontract or an extra charge hereto shall be construed to contain all applicable tax and the subcontractor is responsible for the recordation and payment of taxes in accordance to state and federal tax laws. **No excuse shall be accepted for "forgetting" tax or "omitting" tax.** All taxes for the subcontractor's material and labor are the responsibility of the Subcontractor and is included as a part of his scope.

1.4.2 Joint Payment Option:

Contractor, at its sole and exclusive discretion and without incurring any liability therefore, reserves the right to make any payments to or on behalf of Subcontractor, by issuing checks jointly to Subcontractor and any supplier, laborer, authorized agent for laborers, or creditor of Subcontractor; provided, however, nothing stated herein shall create either a trust fund for such payments or any third party beneficiary relationship by and between Contractor and any such third party paid by such dual payee checks. Subcontractor agrees to furnish the names and addresses of such entities or individuals to Contractor in the form of Exhibit "L", Notice of Disclosure, and in the 'State of Indiana, the "sworn statement" form Exhibit "M", attached hereto and made a part hereof. All vendors and additional "approved" second or third tier subcontractors that provide services or supply materials to this jobsite will be listed on the sworn statement or disclosure form. The Contractor reserves the right to directly pay by way of two party checks, anyone who listed on the sworn statement of notice of disclosure forms. In the event that the subcontractor fails to properly notify the Contractor or owner of lien liability or exposure shall be subject to the ramifications of fraudulently representing information required on the State of Indiana 'sworn statement' form. And will be prosecuted to the fullest extent of the law

1.5 Payments to Subcontractor:

Subject to additional payment terms and conditions set forth in Section 2, Article 4 hereof, progress payments shall be made to Subcontractor as follows: Subcontractor shall submit its payment invoice on the invoice for payment form attached exhibit "I" subcontractor invoice form along with an executed Sworn Statement, in the form of Exhibit "M" and Statement of Disclosure in the form of exhibit "L" attached hereto, and made a part hereof, to Contractor by not later than the 25th day of each month for the value of labor and material provided and incorporated in the Work in place as of that date less previous monies received and retention held. Subcontractor shall separately identify labor and material, and shall certify that all applicable sales and sales and use taxes have been paid. All applicable lien waivers must be submitted with the payment application for the amount of the total draw and for each entry made on the sworn statement or notice of disclosure form. Subcontractor will not receive any payment unless and until it has furnished Contractor with a Certificate of Insurance as in the form of exhibit "H" and "H.1" and W-9 form as in the form of exhibit "G". Payment for ninety percent (90%) of the value of such labor and material will be made on or near the 20th day of the following month for Work completed and accepted by duly authorized representatives of Contractor and Owner after inspection and acceptance thereof.

1.5.1 Waivers of Lien:

Contractor requires, as a condition to any and all payments hereunder, that Subcontractor and each and every subcontractors or suppliers, vendors, equipment lessors or other third party entities contracting with or through Subcontractor as listed on the sworn statement or notice of disclosure form, provide lien waivers to and for the amount of payment sought on every payment application or billing. The furnishing of fully executed waivers of liens, on such forms and for such amounts invoiced and as approved by Contractor, shall be a condition precedent to Contractor processing and paying any amounts to Subcontractor. Contractor shall furnish subcontractor with the waiver forms to be used on the Project. Refer to Section 1 Article 1.21 page 8 for the acceptable forms for use on this project.

1.5.2 Notice of Disclosure:

Contractor requires, as a condition to any and all payments hereunder, that Subcontractor complete and submit with each payment application Contractor's "Notice of Disclosure", being Exhibit "L" attached hereto and made a part hereof, or such other form as may be required by Contractor, listing all outstanding amounts owed to any and all subcontractors, vendors, suppliers and laborers as of and including the 25th of the month for which the payment application is submitted, and identifying all such labor performed and material furnished for which such payment is requested and the amounts due to each, and verifying under oath that all other previously provided labor and materials have been paid by Subcontractor. Contractor shall be entitled to act in reliance upon the completeness and accuracy of such disclosures and statements by Subcontractor and will hold Subcontractor and the individual executing such form or forms personally liable for any material discrepancies, inaccuracies or false statements contained therein. Contractor reserves the right to verify with such third parties all such disclosures made by Subcontractor and to issue two party checks to satisfy material and sub labor expenses for which Subcontractor is requesting payment. The failure and refusal of Subcontractor to furnish the information required herein shall constitute a default under the Subcontract, for which Contractor shall be entitled to pursue all remedies for default as provided by Section 2 Article 9 hereof.

1.5.3 Sworn Statement:

In addition to the Notice Of Disclosure Statement the Sworn Statement will be required for Work performed in the State of Indiana, in accordance with M.C.L.A. §570.1110, and will be required by Contractor as a condition of payment under this subcontract. The Sworn Statement, in the form of Exhibit "M" attached hereto and made a part hereof, shall list each subcontractor and supplier with whom Subcontractor has contracted for the Project, and shall contain a list of all laborers of Subcontractor used in connection with the Subcontract and for whom payment for wages or fringe benefits and withholding are due but unpaid. This form must accompany Subcontractor's pay application, which application will not be processed in the absence thereof, for any Project located in the State of Indiana.

1.6 Retainage 10%:

Retention of ten percent (10%) will be withheld from each approved payment application of Subcontractor. Payment of retainage shall be made in accordance with Paragraph 4.12 hereof. The Contractor reserves the right to partially release retainage on a completed unit basis at its sole and exclusive option and provided that it first obtains the written consent and approval of the Project Owner and Lender. Pending release of retainage such funds may be used by Contractor to cure any default or failure of Subcontractor to perform the Work, as provided for elsewhere herein, and Contractor may deduct and reimburse itself all costs thereof from retainage, plus a 15% markup.

1.7 Trust Fund:

Moneys received by Subcontractor for the performance of the Work hereunder shall be held in trust for payment for labor and material utilized in performing Subcontractor's Work, and said moneys received in payment by Contractor to Subcontractor shall not be diverted to satisfy any other obligations of Subcontractor on work other than this project and under the Subcontract.

1.8 Schedule Requirements:

Unless otherwise specified in this Agreement, the date of commencement of Subcontractor's Work shall be the date of this Agreement, as first written above, **unless provision is made for the date to be fixed in a notice to proceed issued by Contractor.** No formal notices of commencement will be issued; the execution of this agreement is the notice of commencement. The onsite construction superintendent determines the date that work is to commence on a specific module or modules. Subcontractor shall be furnished with an initial target schedule that represents anticipated building completion dates as reflected in the Prime Contract, and will also be furnished with routine schedule updates either written or verbalized by the owner or onsite personnel, as the overall Project Work progresses towards completion. Contractor shall adjust such schedule dates and/or milestones from time to time as the Project proceeds but the deadline for completion of Subcontractor's Work shall not be extended without Contractor's written consent. For such portions of Subcontractor's work as may be performed in phases per building or unit, such phases shall be identified in Exhibit "D, attached hereto and made a part hereof. Subcontractor, in agreeing to complete the Work within the **amount of days** allowed and sequences herein provided, has taken into consideration and made allowances for all hindrances, delays and adverse working conditions, which are or may be incident to its Work. Subcontractor acknowledges and agrees that the times allotted by the Subcontract for the performance and completion of the Work are reasonable and take into account the risks and adverse conditions assumed by Subcontractor hereunder. By executing this agreement the subcontractor understands that completion of his work is determined by the number of days agreed to and also agrees that the dates of the initial target schedule will change, as the superintendent deems necessary. The subcontractor agrees that his performance is scored on his ability to be ready for commencement of work at the superintendent's request and then completing the specific work in the amount of time agreed to in number of workdays initial schedule dates are secondary to the number of workdays allowed to complete tasks.

1.9 Subcontractor General Covenants:

Subcontractor covenants and agrees (a) to perform all Work and labor in accordance with all Federal, State and Local Laws, Codes and Regulations applicable to the Project documented or not; (b) that he has, or will obtain, all necessary licenses, permits, and bonds and authorizations to perform the Work; (c) that it shall at all times supply adequate tools, appliances and equipment, a sufficient number of properly skilled workmen and a sufficient amount of materials and supplies of proper quality to efficiently and promptly prosecute the Work; (d) that it promptly shall pay for all material purchased; and (e) that it shall pay all workmen, including required fringe benefits and related benefits and payroll taxes, and if requested by Contractor, obtain and furnish Contractor weekly with payroll reports verified by affidavit.

1.10 Project Supervision:

Subcontractor shall maintain adequate experienced and cooperative supervisory personnel acceptable and satisfactory to Contractor at the Work site **at all times.** If requested by Contractor, Subcontractor shall provide a full-time, on-site job manager or superintendent for the Project who shall be duly authorized to act for and on behalf of Subcontractor in all matters pertaining to the Project and said manager or superintendent shall attend all job-site meetings regarding the Project.

1.11 Permits and fees and Bonds:

In accordance with the provisions it is the responsibility of Subcontractor to obtain all required permits and to pay all required fees for the performance of its Work to include bonds unless specifically written out of this subcontract agreement.

1.12 Inspections:

Contractor or an assigned representative of the owner/contractor may inspect Subcontractor's Work as often as Contractor deems necessary to determine whether the Work is being satisfactorily performed. This shall not relieve Subcontractor of the sole obligation to supervise the Work and its employees at all times, and such inspection and any failure of Contractor to detect any deficiencies in Subcontractor's Work shall not relieve Subcontractor of its responsibility for such deficiencies. Subcontractor shall promptly correct all Work rejected by Owner or Contractor as defective or failing to conform to the Contract requirements whether observed before or after substantial completion. Subcontractor shall bear all costs of correcting such rejected Work, including any additional costs incurred by Owner or Contractor in the prosecution of the same.

1.13 Cleaning:

As provided in Paragraph 3.18 hereof, Subcontractor **daily** shall clear and remove from the Jobsite and premises any dirt and debris it caused by the performance of the Work, and upon completion of the Work, shall leave the Work area in a broom-clean condition. Should Subcontractor fail to perform such clean up, Contractor shall provide clean-up services, (without notice) and the costs for such corrective Work performed by Contractor on behalf of Subcontractor will be deducted from any payments thereafter due to Subcontractor, including final payment. Application for payment will not be processed without a signed and completed Statement of Compliance. Refer to Exhibit "V". Any cardboard discarded will be cut and reduced in size and bulk before it is discarded in dumpsters located throughout the site. If subcontractor overloads dumpsters either with bulk cardboard or by piling debris too high onto the dumpster, any charge for adjusting the load or cleaning of the area around the dumpsters will be back-charged to the subcontractor without

additional notice or execution of change order.

1.14 Extra Work:

In the event Contractor requests Subcontractor to perform extra Work or directs deductions from the Work, Subcontractor shall submit its quotation covering such changes within the time frame required by Contractor in any such notification by Contractor and such quotation shall include the necessary supporting details to support its price quotation. It is understood and agreed that payment shall not be made for extra Work until a written change order has been issued and executed by Contractor incorporating this additional cost into the Subcontract Amount. **In no event shall subcontractor perform work in the absence of such written authorization to do so.** Payments will not be made on Work that has not been formally approved. Such extra or change work will be documented in a Change Order issued by Contractor. The onsite superintendent is authorized to approve up to \$1,000.00 in extra work per subcontractor in a one-month period. The owner must approve change orders that exceed this amount.

1.15 Bonds:

Payment and Performance Bonds and/or completion bonds should be assumed to be required for any Work performed by on public projects, public right of ways, or public utility. Regardless of whether Contractor notifies Subcontractor of any bonding requirements on such projects, to the extent that the Work hereunder requires bonding, **Subcontractor shall furnish any and all statutory bonds so required**, and it shall be the responsibility of Subcontractor to determine those bond requirements in advance of contracting with Contractor and to include the costs thereof in the Subcontract Amount. If bonds are required for the performance of the Work then a Surety Company approved by the Contractor must issue such bonds. Contract assumes that all work requiring bonds is included in the pricing submitted by the subcontractor and thereby makes no provisions for reimbursement of cost incurred for required bonds.

1.16 Risk of Loss:

Subcontractor assumes the risk of damage or loss to any materials until installed by Subcontractor and accepted and paid for by Owner and Contractor. Neither Owner nor Contractor shall be responsible for any damage to or loss of any Work or materials unless such damage is caused solely and exclusively by the wrongful act or omission of Owner or Contractor. The subcontractor must manage the delivery of materials to the site and is responsible to secure its work and materials and tools and equipment at all times. In the event that buildings are not locked the subcontractor must notify the owner in writing and at the owners discretion relief from this clause may be available. The subcontractor will insure all materials and equipment and tools until such time that the Contractor has accepted and paid for the completely installed work. Damage done to rental equipment provided by the subcontractor will be the responsibility of the subcontractor.

1.17 Assignment or Transfer:

Neither this Subcontract nor any payment to become due hereunder shall be assignable without the prior written consent of Contractor's legal representative only and any assignment attempted without such consent shall be ineffective and vest no rights or remedies in the assignee against Owner or Contractor, and such attempted assignment need not be acknowledged. In no case shall the letting of any subcontract by Subcontractor relieve Subcontractor of its liability and obligations under this Subcontract. Subcontractor acknowledges the right of Contractor to assign all or any portion of the Subcontract to Owner or other third party as may be provided by the Contract Documents. Contractor shall furnish written notice of such assignment to Subcontractor and upon Subcontractor's receipt thereof, the assignee shall succeed to the rights and obligations of Contractor under the Subcontract and under any surety bond furnished by Subcontractor, without recourse by Subcontractor against Contractor, except as such notice of assignment may otherwise provide. Failure by Subcontractor to abide by this provision constitutes a default and breach under the Subcontract and entitles Contractor to assert all rights and remedies upon an event of default, including, but not limited to, the right to terminate the Subcontract and proceed in accordance with the provisions of Article 9 hereof. See also the provisions of Paragraphs 8.4 and 8.8 hereof.

1.18 Notification:

The parties agree that, unless otherwise notified in writing, the address of Contractor and the address of Subcontractor as set forth above (section 1 "Contractor" and "Subcontractor Information") shall be used for the purpose of notifications required under this Subcontract, as set forth in Paragraph 8.6 hereof. Notification is made by way of written correspondence sent by way of UPS next day mail, or FED EX next day mail certified mail or facsimile memo sent to the address listed in the subcontractor and contractor information on the first page of the boilerplate. Failure of either party to acknowledge receipt of notification constitutes notification regardless, as long as proof is at hand that delivery was in fact attempted and receipt received.

1.19 Delay Impact and Disruption Damages:

If Subcontractor is responsible for any delay in the prosecution or completion of any Work or causes a disruption of any time, sequence or scheduled work activity of Contractor, Owner, other subcontractors or third parties, **Subcontractor shall pay Contractor** for all costs and damages suffered by Contractor as a result of such delay, impact or disruption including, without limitation, any actual or liquidated damages assessed against Contractor by the Owner. In the event that any such delay, impact or disruption is caused by the acts, omissions or neglect of Subcontractor and the concurrent acts, omissions or neglect of Contractor, other subcontractors or third parties, Subcontractor agrees to pay Contractor a proportionate share of damages suffered, incurred by or assessed against Contractor, including assessed liquidated damages, as allocated by Contractor, in good faith, between and among Subcontractor and other responsible parties. Such sums may be deducted by Contractor from any unpaid portion of the Subcontract Amount, and without limiting the option of Contractor to terminate this Subcontract for default as herein elsewhere provided.

1.20 Liquidated Damages

It is acknowledged that Subcontractor's failure to achieve substantial completion of the Work within the Contract Time provided herein will cause Contractor to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by Contractor of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in addition to any damages to which Contractor may be entitled in accordance with Paragraph 1.19 hereof, or in lieu thereof at Contractor's sole option, Subcontractor agrees that liquidated damages may be assessed and recovered by Contractor as against Subcontractor and its Surety, in the event of delayed completion and without Contractor being required to present any evidence of the amount or character of actual damages sustained by reason thereof. Subcontractor shall be liable to Contractor for payment of liquidated damages in the amount of Five Hundred Dollars (\$500) or 0.015% of the Subcontract Amount, whichever is greater, for each day that Substantial Completion of this subcontractors work is delayed beyond the Subcontract Time as adjusted for time extensions provided by the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Subcontractor shall pay them to Contractor without limiting Contractor's right to terminate this agreement for default as provided elsewhere herein. Contractor may assess such liquidated damages monthly, or at such other time as Contractor may determine, as a deduction against any payment to which Subcontractor otherwise may be entitled. Notification in writing will be sent to the address of the subcontractor as represented elsewhere in this subcontract document. Liquidated damages will apply 48 hours after postmark or transmission of notification (see exhibit "W")

1.21 Contract Supplementation

If after proper notification has been given the subcontractor fails to perform work to the expectation of the Construction Superintendent or contractor or owner as outlined in the subcontract agreement, the contractor at his own discretion and absent any further notification assign portions of this subcontract to any person or subcontractor he deems fit to pursue the prosecution of the timely execution of work outlined in this subcontract document and then continue to assist in the performance of this subcontract agreement for any period of time necessary to complete all tasks required by the contractor and his schedule requirements. All costs associated with the supplementation of this subcontract will be charged to this contract without notice. (See Section 1 Article 9.2)

1.22 MIOSHA

Subcontractor will provide the owner with its MIOSHA and written Hazardous materials program along with the name of its competent person(s). The Subcontractor will provide all MSDS information prior to commencement of the work. Any claims/penalties arising from failure of this subcontractor to comply with Indiana OSHA (IOSHA) on this jobsite will be assumed by this subcontractor as outlined elsewhere in this agreement. The subcontractor now understands that the roll the Developer and Owner plays is that of construction coordination only. It is the sole responsibility of the subcontractor to practice and enforce the Federal and State OSHA jobsite rules and regulations to the fullest extent and expectation of OSHA. This includes but is not limited to all required postings, trailer and vehicular set up including fire extinguishers, first aid kits, emergency numbers and procedures. Proof of first aid and OSHA training for employees, weekly safety meetings for employees, and the required OSHA 300 form from the previous year and the current year. The Owner accepts no responsibility for the protection or training of subcontractor’s employees placing the full onus on the subcontractor for job site safety and compliance with regards to its employees and particular scope of work.

1.23 Employment Practices

This subcontractor states that this subcontractor legally employs all workers under his/her employ and that all workers are legally allowed to perform work in this country. It is agreed that if work stoppages occur as a result of illegal hiring practices or suspicion of illegal hiring practices that this contract will be supplemented or terminated in accordance to the terms outlined in article 9 of this subcontractor agreement and any/all monies owed to the subcontractor will be held until the subcontract has been assigned or replaced and work performed and accepted by the owner. It is also agreed that any fines or penalties imposed by federal or state agencies concerning illegal employment activities on this jobsite will be deducted from monies owed to the subcontractor without notice.

1.21 Subcontract Exhibits:

The following list of "Exhibits" constitute integral parts of this Subcontract, whether or not physically attached hereto and whether or not separately executed by Subcontractor: Be it known to all that these documents exist and should be in the possession of all parties to this subcontract.

Exhibit No. "A"	General Scope of Work
Addenda 1 Exhibit No. "B"	Scope of Work
Exhibit No. "C"	Revisions to Scope of Work
Exhibit No. "D"	Schedule of completion in workdays
Exhibit No. "E"	Schedule of Values per module, per cost code item
Exhibit No. "F"	Payment and Billing Information
Exhibit No. "G"	W-9 Tax Payer Form
Exhibit No. "H"	Certificate of Insurance Requirements
Exhibit No. "H.1"	Edgewood Insurance Requirements Additional Insured
Exhibit No. "I"	Edgewood Draw Invoice
Exhibit No. "J"	Change Order Request Form
Exhibit No. "K"	Change Order Form
Exhibit No. "L"	Statement of Disclosure
Exhibit No. "M"	Sworn Statement
Exhibit No. "N"	Partial Conditional Waiver
Exhibit No. "O"	Final Conditional Waiver
Exhibit No. "P"	Partial Unconditional Waiver
Exhibit No. "Q"	Final Unconditional Waiver
Exhibit No. "R"	Legal Description
Exhibit No. "S"	Enumeration of Plans and Specifications
Exhibit No. "T"	Vendor/Subcontractor Disclosure Form
Exhibit No. "U"	Subcontractor References
Exhibit No. "V"	Statement of Compliance
Exhibit No. "W"	Notice of Default and Liquidated Damages

END OF ARTICLE 1 - TERMS AND CONDITIONS CONTINUE ON NEXT PAGE

ARTICLE 2 - CONTRACT DOCUMENTS AND SUBCONTRACTOR'S WORK

- 2.1 **The Contract Documents consist of this Subcontract, all exhibits and other Documents incorporated herein by reference**, plus all other Documents, if applicable which comprise or otherwise govern any Prime Agreement between Contractor and Owner, and any items defined or referred to therein as Contract Documents, which may include, without limitation, general, supplementary and other Conditions, Special Provisions, Drawings, Plans, Specifications, the Project Manual, all addenda issued prior to execution of this Subcontract, schedules, and all modifications (including Change Orders and/or Change Directives as hereinafter described) issued subsequent hereto. The Contract Documents do not include any proposal or other submission furnished by Subcontractor prior to the date hereof, unless separately accepted and acknowledged as such by Contractor in writing. If Contractor itself is a Subcontractor for the Project, the term "Owner" as used throughout this Subcontract shall include the Owner(s) and the prime Contractor for the Project with whom Contractor has contracted; and the term "Prime Agreement" shall also include the Subcontract between Contractor and such prime Contractor. Contractor makes no representation or warranty to Subcontractor concerning the acceptability, accuracy or completeness of the Contract Documents or other information and data prepared by persons other than Contractor, and accordingly, Contractor shall have no liability to Subcontractor in respect of any patent or latent defects, deficiencies, errors and omissions therein.
- 2.2 **The Contract Documents govern the Subcontractor's Work**, including any and all labor, materials or services furnished to or for the Project prior to the date hereof. Subcontractor shall be bound to Contractor by at least the same obligations, risks, procedures, requirements, restrictions and other matters that Contractor, by the Contract Documents, is bound toward the Owner, and Contractor shall, in addition to any greater rights and remedies provided by this Subcontract, have the same rights and remedies against Subcontractor that the Owner or any other party has against Contractor under the Contract Documents or applicable laws. Subcontractor acknowledges that it has had an adequate opportunity to review and/or obtain copies of all existing Contract Documents and, in any case, it shall not be excused from any provisions therein due to any lack of knowledge or understanding of the existence or contents thereof at the time of executing this Subcontract.
- 2.3 **The Subcontractor shall perform no portion of its Work without Contract Documents** and, where required, approved Shop Drawings, Product Data, Samples or other approved submissions. The Subcontractor shall keep at the Project site, for the Contractor's ready reference, one up-to-date copy of the Contract Documents, in good order and marked currently to record all changes made during construction.
- 2.4 **The minimum quantity, quality and fitness of materials**, equipment, services, Workmanship and other elements of Subcontractor's Work shall be based on the requirements that all such Work shall conform with the requirements of the Contract Documents. The Contractor and Owner may render interpretations and decisions concerning the execution, progress, quality or quantity of the Subcontractor's Work, and any such interpretation or decision by a third party that becomes binding upon Contractor shall also become binding upon Subcontractor and shall resolve and take precedence over any ambiguity or other inconsistency within, between or among the Contract Documents. What is or has been usual or customary in a given trade or on other projects shall not limit, qualify or reduce the standards of quality, fitness and/or performance of products and Workmanship established by or inferable from the Contract Documents.
- 2.5 **The Contract Documents shall be deemed to include and require** all items and aspects of labor, material, equipment, services and transportation incidental to or necessary for the proper execution and completion of the Subcontractor's Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not specifically covered in the Contract Documents or which is subject to question and interpretation because of conflicts, duplications or ambiguities may, at Contractor's option, be required of Subcontractor if it is consistent therewith and is reasonably inferable there from as being necessary to produce the results intended by this Subcontract. In the event of an irreconcilable conflict between the terms of this Subcontract and terms stated in any other of the Contract Documents, the terms of this Subcontract shall govern. In all other circumstances of irreconcilable conflict or ambiguity within or among the Contract Documents, the term(s) which give greater rights to the Contractor or impose greater or more extensive qualitative or quantitative obligations on Subcontractor shall govern, at Contractor's option, without regard to the party who drafted any provision or Document contributing or giving rise to such conflict.
- 2.6 **Any general description herein of the scope** and quality of Subcontractor's Work shall be subordinate to any more specific or detailed descriptions that may be stated in any Exhibit hereto and elsewhere in other Contract Documents. Subcontractor has examined the Contract Documents, acknowledges the Contract Documents to be suitable for said Subcontractor's Work and sufficient for their intended purposes, and agrees to perform the Subcontractor's Work and complete same in full and strict accordance therewith and to the entire satisfaction of Contractor and Owner.

ARTICLE 3 - SUBCONTRACTOR PERFORMANCE AND COMPLETION

- 3.1 **Subcontractor shall take directions and orders regarding the performance of this Subcontract only from Contractor** and shall be solely responsible to Contractor for all construction means, methods, techniques, sequences and procedures utilized in performance of the Subcontractor's Work. Contractor shall not be liable for any costs or damages incurred by Subcontractor to respond or conform to any orders, directives or other form of communications made directly to Subcontractor by any persons other than Contractor's authorized agents as set forth in Paragraph 1.2 and 1.2.4 above.
- 3.2 **Subcontractor represents that it has investigated and satisfied itself as to all direct and indirect conditions**, circumstances, uncertainties and risks that may affect the performance of its Work or influence the cost thereof. Subcontractor further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials, obstacles and other conditions, which may be encountered. Accordingly, Contractor shall have no responsibility to Subcontractor as a result of any actual encountered conditions, circumstances, uncertainties and risks being different from those contemplated, assumed, inferred or foreseen by Subcontractor. Subcontractor also represents that it is familiar with work practices and requirements for the Subcontractor's Scope of Work that are routinely performed in the Project Locale. It is expected that Subcontractor is aware of these common practices and procedures and of the locale inspectors' interpretations of codes, ordinances, and specifications, and will perform its work so as to comply with such applicable codes, ordinances and specifications especially in the event that the plans and specifications may be erroneous by omission or misinterpretation of a local inspectors expectation or interpretation.
- 3.3 **Subcontractor shall coordinate and schedule its Work to ensure it is accomplished as an integrated whole** with the Work of Contractor, other Subcontractors and separate Contractors. Any labor, materials, equipment, machinery or services necessary to accomplish such integration shall be undertaken by Subcontractor as part of its Work and at no additional cost to Contractor, whether or not explicitly shown or described in drawing or other Contract Documents. If part of Subcontractor's Work depends for proper execution or results upon construction or operations by the Contractor, Owner, another Subcontractor or a separate Contractor, the Subcontractor shall, prior to proceeding therewith, promptly report to Contractor, in writing, any discrepancies or defects in such other construction. Failure to report any discrepancy or defect that was known to the Subcontractor or that could have been known through the exercise of due diligence, shall constitute acceptance of such other construction and a waiver by Subcontractor of any and all claims arising out of or relating thereto.
- 3.4 **All of Subcontractor's Workmanship, materials, submissions**, and samples shall be subject to the approval of Contractor and Owner, but such approval, if and when given, shall neither relieve Subcontractor of its obligations hereunder nor mitigate its liability to Contractor for failure to perform in accordance with the Contract Documents.

- 3.5 **Subcontractor shall promptly comply with any directives issued by Contractor concerning locations where Subcontractor's Work** is to be suspended, transferred or performed, the sequence of such Work, and the elements of Work to be executed in preference to other portions. Contractor is not, however, obligated to notify Subcontractor when to begin, cease or resume Work, or to superintend the Subcontractor's Work so as to relieve Subcontractor of responsibility for any consequence of neglect or carelessness by Subcontractor or those for whose acts and omissions Subcontractor is responsible. The written anticipated schedule is available at the home office of Contractor, at Contractor's Project field office upon request. If in its opinion Subcontractor feels that the Contractor has neglected to post adequate schedule bulletins or updates to its satisfaction then this Subcontractor must report the problem to Contractor's owner if relief is expected.
- 3.6 **Contractor and Owner shall have free and open access to any locations on or off the site of the Project** where any part of the Subcontractor's Work is being performed, and may observe, test and inspect any element of such Work during the course of construction, fabrication or assembly of same. Subcontractor shall fully cooperate in connection with all such observations, tests and inspections. Further, Subcontractor shall afford Contractor's separate Subcontractors reasonable opportunity for introduction and storage of their materials and equipment for execution of their Work. However it is the responsibility of this Subcontractor to perform all testing required to ensure that work performed meets or exceeds the design criteria, or expectations of known inspecting entities, and under no circumstances shall the failure or election of Contractor or Owner not to inspect the Work of Subcontractor act as an excuse for Subcontractor not conducting its own inspections and testing to ensure that its Work is in compliance with the Plans and Specifications and Contract Documents.
- 3.7 **Subcontractor shall adhere to any scheduling requirements stated in this Subcontract, any Exhibit hereto, and any other Contract Documents and**, shall commence all elements of Subcontractor's Work when and as directed by Contractor and diligently and continuously prosecute and coordinate such Work using such Work forces, supervision, materials and equipment as required to ensure that Contractor, other Subcontractors and third parties will not be delayed, interrupted, hindered or disrupted by Subcontractor's activities or operations and to ensure completion of Project Work within the time(s) or by the Project or milestone completion date(s) specified by the Contract Documents or by any schedule developed or issued there under. All materials and labor shall be furnished at such time as shall be for the best interests of the Contractor and all Subcontractors concerned to the end that the combined Work of all may be properly and fully completed in accordance with scheduling and coordination requirements for the Project.
- 3.8 **Initial or revised Project schedules** may, from time to time, be issued by Contractor or other parties to schedule and coordinate the times required for one of more areas, phases or types of Work on the Project. Subcontractor shall participate and cooperate in scheduling the times and sequences required in Subcontractor's area of Work and shall perform such Work in accordance with any such schedules. Subcontractor acknowledges that performance of its Work shall require working in multiple locations or building units at the Project concurrently and Subcontractor agrees to schedule and sequence its work accordingly. Subcontractor shall continuously monitor current schedules and advise Contractor of the status of Subcontractor's progress in respect thereto, as requested. Subcontractor shall immediately notify Contractor of any circumstance which may affect any scheduled times and sequences for Project Work.
- 3.9 Time is of the essence of this Subcontract and any breach of same shall go to the essence thereof. If, in the opinion of the Contractor, the Subcontractor is behind schedule in its Work or fails without cause to maintain progress of its Work to conform to the general progress and sequence requirements for the Project, Subcontractor shall, at its own expense, perform any overtime Work, use extra labor, and undertake all other means necessary to bring its Work back into conformity therewith.
- 3.10 **Subcontractor may be delayed, accelerated, suspended,** hindered or disrupted by acts or omissions of the Owner, Contractor, other Subcontractors and other parties involved with the Project; or by other circumstances not caused by or within the control of Subcontractor and recognized by the Contract Documents as excusable conditions justifying extension of the time allotted for performing and completing the Subcontractor's Work. In such cases, Subcontractor shall submit all notices requesting extension(s) of time in writing to Contractor sufficiently in advance to allow Contractor to fulfill Contractor's responsibilities to Owner concerning same; Provided, that in no event shall such notice be submitted later than three (3) calendar days after the commencement of the first event or circumstance upon which such request is based. Subcontractor shall be deemed to have unconditionally waived any right to claim or receive a time extension if notice thereof is not provided to Contractor in the manner and within the time period prescribed herein. Under no circumstances shall Subcontractor be entitled to any time extension(s), which exceed the duration of time extension(s), granted by Owner to Contractor. Furthermore, time extension(s) warranted under this Paragraph shall be Subcontractor's sole and exclusive remedy in respect of any and all forms of delay, acceleration, suspension, hindrance, interference or disruption sustained by Subcontractor; accordingly, Subcontractor shall not be entitled to recover and hereby unconditionally waives and relinquishes any right to make any claim for any damages or other monetary relief for or in connection therewith, regardless of the nature of the circumstances or the extent or duration of adverse impact(s) thereof, any and all such circumstances and consequences being within the contemplation of the parties.
- 3.11 **Subcontractor shall be liable for all costs and damages sustained by or asserted against Contractor as a result of any unexcused delay** or other failure by Subcontractor or those persons for whom Subcontractor is responsible to prosecute and complete Subcontractor's Work as prescribed by the Contract Documents, including, without limitation, any damages assessed against Contractor by the Owner, separate Contractor, third party beneficiary, or other party. If any period of delay or disruption in Project Work is caused, in whole or in part, by the concurrent acts, omissions or neglect of the Subcontractor and Contractor, other Subcontractors, or other third parties, Subcontractor shall be responsible for a proportionate share of such damages, including liquidated damages, as determined in good faith, by Contractor.
- 3.12 **Acceleration of the Work.** Contractor may, at any time, schedule and direct Subcontractor to perform Subcontractor's Work using multiple crews or shifts, or on an overtime basis. If directed overtime Work is not required in whole or in part due to Subcontractor's acts, omissions or delays, Contractor shall pay the cost of the premium time only, without overhead or profit, and Subcontractor agrees to accept such portion in complete settlement of any and all claims for damages, loss, cost or expense caused by or in any way related to overtime conditions or directives, including, but not limited to, costs for owned or rented machinery or equipment. As a condition to its right to payment of such costs, Subcontractor shall keep and present a satisfactory and verifiable accounting of compassable actual overtime labor costs, with appropriate supporting Documentation as required by Contractor, which may include certified weekly payroll submissions.
- 3.13 Subcontractor shall prepare and submit periodic written Work reports in such form and at such times as Contractor may prescribe. A representative of Subcontractor shall attend all meetings when scheduled by Contractor or other third parties for the purpose of scheduling, planning or coordinating Work for the Project, and any such representative attending any such meeting shall be conclusively deemed to have the authority to bind Subcontractor in respect of any representations or commitments made on behalf of Subcontractor during such meetings.
- 3.14 Subcontractor shall at his own expense (i) take all necessary precautions to protect the Work of other trades from any damage caused by Subcontractor's operations, and (ii) watch over, care for and protect from damage or injury by any cause whatsoever, all of Subcontractor's Work, complete or otherwise, and all of his materials, supplies, tools, machinery and equipment at or near the Project. Subcontractor agrees, without loss or damage to Contractor, to make good any loss or damage to any and all such Work, materials, supplies, tools, machinery and equipment up to the final acceptance of the entire Project by Contractor and the Owner.
- 3.15 **Subcontractor shall take all reasonable safety precautions with respect to Subcontractor's Work**, and shall comply with such safety measures and accident reporting procedures as may be initiated by Contractor or authorized third

parties. Furthermore, Subcontractor shall strictly comply with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property and for reporting, disclosing, communicating about, disposing, treating and handling of hazardous or toxic substances. Subcontractor shall furnish Material Safety Data Sheets for materials associated with its Work. Subcontractor assumes primary responsibility for compliance with all applicable occupational or Workplace safety laws and regulations, including but not limited to State and Federal Occupational Health and Safety Acts ("OSHA"), and neither the Contractor's authority to initiate safety measures nor the exercise thereof by Contractor shall in any way relieve Subcontractor of such primary responsibility. In the event that any action is taken against Contractor, including but not limited to assessments of fines or penalties, whether by State or Federal OSHA agencies or otherwise, due to any actual or alleged violation, act or omission caused or created by Subcontractor or any other party for whom Subcontractor is responsible, whether also caused in part by Contractor, Subcontractor shall defend, indemnify and hold Contractor harmless there from, and shall be liable for all costs and damages sustained by Contractor as a result thereof, including, but not limited to, fines, penalties and attorney fees incurred in the defense of or appeal from any such action, and any OSHA/MIOSHA proceeding or hearing which may occur or be related thereto.

- 3.16 **Subcontractor shall be responsible for unloading and hoisting all of its materials, supplies, tools, machinery and equipment** in order to ensure the timely completion of Subcontractor's Work and shall, at no additional cost to Contractor, provide all temporary facilities and services necessary to complete the Work in accordance with the Contract Documents and as required by weather and other Work conditions at the Project site. The Contractor shall not be responsible for providing any temporary facilities or services necessary for the Subcontractor to perform the Work, except as may be specifically noted otherwise herein or otherwise separately agreed in writing. To assist the progress of the Work, Contractor may allow Subcontractor from time to time to utilize Contractor's temporary facilities or services, but it shall have no obligation to do so.
- 3.17 **Subcontractor shall give all notices and comply with the requirements of all applicable insurance policies and all codes, laws, ordinances, rules, regulations and orders of any public authority**, bearing on the performance of the Work under this Subcontract, whether now existing or hereafter promulgated. Subcontractor shall secure and pay for all permits, fees and licenses necessary for the execution of the Subcontractor's Work, and shall pay all local, state and federal taxes in connection with the Subcontractor's Work, all of which costs are included in the Subcontract Amount. There shall be no increase in the Subcontract Amount resulting from any new, additional or unanticipated taxes or contributions. When required by Contractor, Subcontractor will furnish satisfactory evidence showing that all such payments have been made. If Subcontractor performs any Work contrary to such requirements, codes, laws, ordinances, rules and regulations Subcontractor shall assume full responsibility therefore, and shall bear all costs and damages attributable thereto.
- 3.18 **Subcontractor will clean up and haul off the premises, or to a place on the premises specifically designated by Contractor, all debris occasioned by the Work done hereunder** and will leave the Project and premises clean and free of equipment, machinery, materials, temporary facilities and debris. Any trash, debris, or liquid that poses a possible threat of fire or safety shall be removed from the premises immediately. If, after 24 hours notice by Contractor to Subcontractor, Subcontractor has not diligently proceeded with clean-up as outlined in this Paragraph, then Contractor may proceed with such clean-up Work at Subcontractor's cost and expense. Clean-up charges involving the Work of multiple Subcontractors may be apportioned among them by the Contractor, and Subcontractor shall be responsible for its share of such costs as determined in good faith by Contractor. Subcontractor will include with his pay application, a fully executed Statement of Compliance, Exhibit "V", verifying, by the Superintendent, that all clean up has been performed.
- 3.19 **Subcontractor shall, at its sole expense and in such manner and within such time limits as Contractor may prescribe, submit to Contractor complete shop drawings, data, catalog cuts samples and other appropriate submittals** as required by the Contract Documents in respect of Subcontractor's Work. Review, approval or other actions by Contractor and/or Owner upon such submittals shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents, nor of its responsibility for the proper matching and fitting of its Work with contiguous Work. Failure of Subcontractor to make original or revised submittals in a timely fashion and in the manner required to assure timely and proper completion of all Work for the Project shall be cause for Contractor exercising its right to terminate this Subcontract or to pursue other available remedies in respect of Subcontractor's breach or default hereunder.
- 3.20 **Notwithstanding the dimensions given on the plans, specifications and other Contract Documents, it shall be the obligation and responsibility of Subcontractor to take such measurements** as will insure the proper matching and fitting of all items and components of the Work covered by the Subcontract with other elements of the Work and with contiguous Work of others. Subcontractor shall verify measurements, lines and grades of existing conditions and structures at the site, and when indicated dimensions are not in Agreement with field measurements, Subcontractor shall notify the Contractor immediately, in writing, requesting clarification. Subcontractor is responsible for its own layout and for the protection and preservation of all installed engineering data and layout points and shall take all necessary precautions to insure that said data or points are not damaged, destroyed, altered or changed. Re-engineering, if required, shall be performed at Subcontractor's expense. Subcontractor shall be responsible for all cutting and patching required in the prosecution of the Subcontractor's Work.
- 3.21 **The Subcontractor shall limit use of the site to areas defined by Contractor and to the construction limits for its Work and storage** to allow for Work of other Contractors and third parties and shall assume full responsibility for the protection and safekeeping of materials, machinery and products provided under the Subcontract and stored on the site or elsewhere during fabrication, storage and shipping. Subcontractor shall, at no cost to Contractor, move any stored products which interfere with operations of the Contractor or other Contractors or Subcontractors as directed by Contractor and obtain and pay for the use of additional storage or Work areas needed for the Subcontractor's operations.
- 3.22 **If the Contractor determines that any Work requires special inspection, testing, or approval, Contractor may perform or order Subcontractor to perform the same.** If such special inspection or testing reveals any failure of the Subcontractor's Work to comply with the requirements of the Contract Documents, the Subcontractor shall bear all costs thereof, without apportionment, by deductive Change Order or direct reimbursement to Contractor as appropriate.
- 3.23 **Subcontractor warrants that all materials, machinery, systems and equipment furnished and incorporated pursuant to this Subcontract shall be new unless otherwise specified**, and that all Work, materials, machinery, systems and equipment shall be and remain of good quality, free from faults, liens, security interests and defects and in strict conformance with the Contract Documents. All Work not conforming to these standards shall be deemed defective. The Subcontractor agrees to indemnify and hold Contractor and Owner harmless from any losses, costs or other damages or expenses, including attorneys' fees, resulting from any breach of such warranty and any other express or implied warranty applicable to its Work. The Subcontractor shall bear all expenses incurred by Contractor in connection with the inspection, removal, repair, correction, handling and transportation of defective or nonconforming Work. In addition, at Contractor's option, Subcontractor shall: (i) bear the costs of replacement materials, equipment and labor and all damages incurred by Contractor and (ii) pay Contractor for all expenses incurred in and delay caused by remedying defective or otherwise nonconforming Work. The provisions of this Paragraph shall survive the making and acceptance of partial or final payments and/or termination of this Subcontract.
- 3.24 **The Subcontractor shall, at its sole expense, promptly and properly repair, replace or otherwise correct any Work that is (i) rejected by Contractor, Owner or Architect, or (ii) known, observed or discovered at any time by Subcontractor, Contractor, Owner or Architect to be defective or failing to conform to the Contract Documents.** Furthermore, if, within one year after final completion and acceptance of the Project, or such longer period established by other Contract Documents, the Work or any portion thereof is found to be not in accordance with the requirements of the Contract

Documents, Subcontractor shall correct it promptly after receipt of written notice from Contractor to do so. The period within which Subcontractor shall be obligated to correct Work shall be extended with respect to portions of Work, including corrective Work, first performed after final completion and acceptance of the Project. Subcontractor's obligations under this Paragraph shall survive completion and acceptance of the Subcontractor's Work and Project and termination of this Subcontract. Nothing herein shall be construed to establish a period of limitation with respect to obligations of Subcontractor arising from defective or non-conforming Work; specifically, the obligation of Subcontractor to correct the Subcontractor's Work has no relationship to the time within which the Subcontractor's warranty obligations may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Subcontractor's obligations other than the correction of the Subcontractor's Work nor to the time within which defects or deficiencies in the Subcontractor's Work must first be observed or experienced.

ARTICLE 4 - PAYMENT

- 4.1 **As full consideration for complete and timely performance of the Subcontractor's Work** and for all obligations and conditions undertaken and risks assumed by Subcontractor in connection therewith, Subcontractor shall be paid the Subcontract Amount stated in Article 1. The Subcontract Amount shall be the total sum paid to Subcontractor, except as may be amended by a duly authorized and executed Change Order or Variance Purchase Order as provided herein. Amounts paid to Subcontractor prior to the date of this Subcontract for Work performed pursuant to interim authorization by Contractor, if any, shall be applied against the Subcontract Amount.
- 4.2 **If the Subcontract Amount is to be measured, in whole or in part, by unit price(s) based on quantities of specified Work** installed or completed, Subcontractor shall be bound by any and all determinations made by Contractor, Owner, or their representatives, of actual or estimated interim or final unit price quantities as the basis for computing the Subcontract Amount payable to Subcontractor.
- 4.3 **The Subcontract Amount includes all allowances stated in the Contract Documents for the Subcontractor's Work**, if any. Items covered by these allowances shall be supplied for such amounts and by such persons as the Contractor may direct. Unless otherwise provided in the Contract Documents, allowances shall cover the cost to the Subcontractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes, plus all costs for unloading and handling on or off the site, labor, installation, overhead, profit and other expenses associated with items covered by allowances. Whenever the actual cost of the materials and equipment delivered at the Site is more than or less than the allowance, the Subcontract Amount shall be adjusted accordingly by Change Order.
- 4.4 **Subcontractor shall submit to Contractor a schedule of values of the various parts of the Subcontractor's Work aggregating the total Subcontract Amount.** Such schedule of values must be submitted to and **approved by Contractor** as a condition precedent to Subcontractor's right to apply for or receive any payments hereunder, and shall be in such form, and contain such detail and categories for Work, as Contractor may prescribe. The approved schedule of values shall be used as a basis for applications for payments, unless found by Contractor to be in error. Subcontractor shall also furnish a sworn list of sub-Subcontractors and material suppliers to be utilized by Subcontractor for any part of its Work, in the form of the Sworn Statement of Compliance, being Exhibit "T" attached hereto.
- 4.5 **Except as otherwise provided herein, and provided Subcontractor is not in default hereunder, progress payments will be made to Subcontractor on a monthly basis for Subcontractor's Work** performed through the preceding month. The amount of an interim or final payment to Subcontractor shall not exceed the value of labor and materials incorporated by Subcontractor in the Subcontractor's Work as of the 25th day of the month for which the application for payment is submitted, less retainage thereon to be withheld there from in such percentages as may be provided elsewhere in this Subcontract, and less the aggregate of previous pay applications. Furthermore, the amount of a progress payment shall not exceed the percentage of completion allowed to Contractor by Owner for the Subcontractor's Work, less the specified retainage.
- 4.6 **As provided in Paragraph 1.5 above, payments shall not become due to Subcontractor for any portion of its Work unless and until such Work is accepted by Contractor and Owner**, and Contractor first receives payment for such Work from Owner, and the amount due shall not exceed the net amount actually received by Contractor as applicable to Subcontractor's Work after deducting Contractor's profit and overhead margin. Such receipt of payment by Contractor is intended as a condition precedent to any obligation of the Contractor or its surety to pay Subcontractor and Subcontractor accepts the risks associated with such contingency. Subcontractor waives any right to demand or receive any progress, final or retainage payments sooner or in greater amounts than provided herein.
- 4.7 **Subcontractor's applications/invoice for payments shall be submitted in strict conformity with any billing requirements** set forth herein or in other Contract Documents. Each application shall be submitted on such forms as Contractor may prescribe (see Paragraph 1.21 and Exhibit "F" Payment and Billing Information), and shall be accompanied by breakdown data and other documentation as necessary to permit checking and verification of amounts properly payable to Subcontractor on account of Subcontractor's Work.
- 4.8 **If the Contract Documents permit payment for materials, machinery or equipment not incorporated into Subcontractor's Work**, but delivered and suitably stored on or off the site of the Project, Subcontractor shall, as a condition to its right to receive any such payment, provide all certificates, Documents of title, insurance coverage's and other items prescribed by the Contract Documents to establish, ensure and protect Contractor's and/or Owner's title and right of possession and access to any such materials for which payment is being sought. An arrangement to receive payment for materials or equipment stored off site or on site would have to be approved in writing by the Owner's agent designated in Paragraph 1.2 and 1.2.4 above..
- 4.9 **Subcontractor shall promptly pay for all materials, machinery, equipment and labor used in, or in connection with, the performance of this Subcontract**, and no interim or final payments shall become due until Subcontractor has furnished notice of disclosures, sworn statements, affidavits, waivers, releases, certificates, or other evidence satisfactory to Contractor to establish that Subcontractor has paid for and discharged all actual or prospective claims and liens in respect of such materials, machinery, equipment and labor. Furthermore, Contractor may, at any time, require Subcontractor to provide a duly executed sworn affidavit or statement identifying all sub-Subcontractors, material men and laborers engaged or employed by Subcontractor to furnish labor, materials, equipment or services to or for the Project and the respective amounts claimed by each to be due and owing from Subcontractor, in which event the submission of such affidavit or statement shall be an additional condition precedent to Contractor's obligations to make payment to Subcontractor hereunder.
- 4.10 **Payments otherwise due to Subcontractor may be withheld by Contractor upon the existence or reasonable belief of Contractor concerning the existence or probability of** (i) uncorrected defective or non-conforming Work, (ii) claims or liens filed, (iii) Subcontractor's failure or neglect to make payments properly due to its sub-Subcontractors or for materials, machinery, fuel or labor, or applicable taxes, fees and fringe benefits or (iv) reasonable doubt that the Subcontract can be completed for the balance then unpaid, (v) any other breach of this Subcontract or (vi) any other conditions specified elsewhere in the Contract Documents as grounds for withholding of payment. If the said causes are not removed, Contractor may rectify the same at Subcontractor's expense and may make direct disbursement to unpaid claimants from payments withheld; however, the right of Contractor to make such direct payment shall not be construed to create a duty to do so. Contractor may offset against any sums otherwise due Subcontractor the amount of any liquidated or un-liquidated obligations of Subcontractor to Contractor, whether or not arising out of this Subcontract.

- 4.11 **No payment to Subcontractor shall operate as an approval of Subcontractor's Work**, or any part thereof, or as a release of Subcontractor from any of its obligations under this Subcontract.
- 4.12 **Final payment to Subcontractor** shall not become due until and unless (a) Subcontractor's Work is fully completed and performed in accordance with the Contract Documents and is satisfactory to and approved by Contractor, Owner Project Architect and Lender, and (b) Subcontractor has delivered all manuals, record drawings, guarantees, and warranties for material, machinery and equipment furnished by Subcontractor, and testing and/or inspection results or reports applicable to Subcontractor's Work, and (c) delivery to Contractor of satisfactory evidence that all labor and material accounts incurred by Subcontractor in connection with his Work have been paid in full, and (d) other submittals have been provided as prescribed elsewhere in this Article, and (e) Subcontractor has fulfilled all other requirements established by the Contract Documents to serve as conditions for final payment, and (f) Contractor has received full and final payment from Owner for such Work, which receipt of payment shall be a condition precedent to Contractor's obligation to make final payment to Subcontractor.
- 4.13 **The making and acceptance of any sum tendered as final payment to Subcontractor shall constitute a waiver** of any and all claims by the Subcontractor, excepting those claims previously made in writing and specifically identified as unresolved in the Subcontractor's application for final payment.

ARTICLE 5 - BONDS AND INSURANCE

- 5.1 **If any bonds are required to be provided by Subcontractor as set forth elsewhere in this Subcontract or other Contract Documents**, such bonds shall name Contractor as obligee, and each such bond shall be in a penal sum equal to the Subcontract Amount or the same multiplier applicable to bonds furnished to the Owner by the Contractor, whichever is greater, and the bonds shall be executed on such form and with such surety as is acceptable to Contractor. The premium costs incurred for such bond(s) is included in the Subcontract Amount.
- 5.2 **If bonds are not required of Subcontractor as of the date of this Subcontract, the Contractor may nevertheless, by written notice to Subcontractor at any time before final completion and acceptance of Subcontractor's Work**, require Subcontractor to provide performance and/or payment bonds in such penal sums as Contractor may determine to represent 150% of the value of Subcontractor's remaining unperformed Work and other obligations. If Subcontractor is not then in default under this Subcontract and no just cause exists for withholding of payment to Subcontractor, the premium costs for such bonds, excluding overhead and profit, will be added to the Subcontract Amount by Change Order; otherwise, Subcontractor shall pay such costs without increase in the Subcontract Amount.
- 5.3 **Subcontractor shall maintain at its own cost, one or more policies of insurance conforming to the following requirements**, or other requirements prescribed by the Contract Documents, whichever are greater: (see attached Exhibit "H" and "H.1")
- .1 Commercial General Liability: \$1,000,000 Each Occurrence; \$2,000,000 Aggregate (per project). Exclusions of coverage for the "XCU" (explosion, collapse and underground) exposures must be deleted. Products-Comp/Op/Agg. \$2,000,000. Personal and Adv. Injury \$1,000,000.
 - .2 Business Automobile Liability: \$1,000,000 Each Accident.
 - .3 Workers Compensation/Employers Liability: Coverage A (Workers Compensation) = statutory coverage; Coverage B (Employer's Liability) = \$1,000,000 each accident, \$1,000,000 disease/each employee, \$500,000 disease/policy limit. Coverage to be valid in all states covered by the Prime Agreement:
 - .4 Umbrella Liability: \$5,000,000 each occurrence; \$5,000,000 Aggregate. Policy shall be endorsed to provide "Follow Form" coverage (including coverage enhancements) on the General, Automobile and Employer's Liability policies.
 - .5 Insurance shall provide coverage on an occurrence basis, regardless of the negligent acts of any of the Owner, Contractor, Subcontractor and sub-Subcontractors and any of their respective officers, directors, consultants, agents and employees, and shall be endorsed to include the Owner, Contractor, other parties required to be covered by the Contract Documents, and their respective officers, directors, consultants, agents and employees as additional insured's.
 - .6 Liability insurance shall provide coverage to fulfill Subcontractor's obligations with regard to the indemnification requirements and any claim, damage, loss or expense described in this Subcontract.
 - .7 The policy or policies shall further provide that the insurance will not be canceled or changed prior to at least 30 days after written notice by certified mail of such cancellation or change has been received by Contractor.
 - .8 Insurance shall provide primary coverage, and Subcontractor will be solely responsible for the payment of any deductible, and there will be no contribution by Contractor or from Contractor's insurance until the limits of Subcontractor's coverage have been exhausted.
- 5.4 **Prior to commencing the Subcontractor's Work, Subcontractor shall cause a Certificate of Insurance**, with additional insured endorsements form attached naming the Contractor and Owner as additional insured's, to be executed by one or more companies acceptable to Contractor and Subcontractor shall file a copy thereof with Contractor. Subcontractor shall provide a copy of actual insurance policy(ies) to Contractor if requested to do so. Contractor may withhold payment to Subcontractor pending receipt of such Certificate and/or requested copies of insurance policies.
- 5.5 **If at any time Subcontractor fails, neglects or refuses to provide the required insurance** or evidence of same, Contractor shall have the right, but not the duty, to provide such insurance and deduct the cost thereof from any money otherwise due to Subcontractor.
- 5.6 **Contractor and Subcontractor waive all rights against each other, the Owner, and those persons with whom they are in privities of Contract, for damages caused by fire or other causes of loss** to the extent covered by property insurance applicable to the Work for the Project, except such rights as they may have to proceeds of such insurance held by the Owner or other person as a fiduciary.
- 5.7 **Subcontractor shall have no right to receive any payments under this Subcontract until and unless Subcontractor's obligations** under this Article with respect to required bonds and insurance are fully and properly fulfilled, regardless of the status or degree of Subcontractor's Work or performance of other obligations under this Subcontract.

ARTICLE 6 - CHANGES AND CLAIMS

- 6.1 **The Subcontractor's Work may at any time be modified in any respect by changes, additions or deletions** directed by or on behalf of Owner or Contractor, and the Subcontract Amount and time for completion may be adjusted accordingly, by written Change Order or Change Directive, as applicable, in accordance with the Contract Documents. Adjustments in the Subcontract Amount for items of changed Work for which unit prices are specified in this Subcontract shall be computed solely by reference to unit prices.

- 6.2 **The Contractor may provide Subcontractor with a written notice describing the change in the form of drawings or otherwise.** In such case, the Subcontractor shall submit to Contractor a firm Change Order proposal for any adjustments in the Subcontract Amount and/or time for completion resulting from the proposed change. The proposal shall be submitted within time limits prescribed by the Contract Documents, or if not so prescribed, as directed by Contractor, and after it is submitted it shall not thereafter be modified or withdrawn without Contractor's written approval. If the Contractor issues a written Change Directive for Subcontractor to commence performance of all or any portion of the change prior to executing a Change Order or in the absence of other form of written Agreement concerning the amount of adjustments, if any, in the Subcontract Amount or time for completion, the Subcontractor shall promptly proceed with the change as directed, in which case said adjustments shall be determined in accordance with terms, limitations and procedures established elsewhere in the Contract Documents.
- 6.3 **The Contractor will have authority to order minor changes in the Subcontractor's Work not involving an adjustment in the Subcontract Amount** or an extension of time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Subcontractor. The Subcontractor shall carry out such written order promptly and in the manner directed by such written order.
- 6.4 **No alterations, increases or decreases shall be made in the Subcontractor's Work as shown or described by the Contract Documents** except as specifically authorized or directed by a written Change Order or Change Directive signed by a duly authorized representative of Contractor. Subcontractor shall have no claim for additional, extra or changed Work unless such Work is undertaken in pursuance of such Change Order or Change Directive, and any Work performed without such order or directive shall be at Subcontractor's sole risk and expense.
- 6.5 **Except as otherwise provided by Paragraph 6.2, in all circumstances whereby Subcontractor desires to preserve the right to claim or recover an increase in the Subcontract Amount,** costs, damages or extension(s) of time, Subcontractor shall, as a condition to such right of claim or recovery, give Contractor written notice thereof (i) within five (5) calendar days after the first occurrence of the event or circumstance giving rise to such claim, or (ii) at least five (5) days before the date when Contractor is required by the terms of the Contract Documents to provide the same or similar notice to Owner or other third party, whichever occurs first. The notice shall particularly set forth the event(s) or fact(s) supporting and giving rise to such claim, the cost thereof and the time extension requested, if any. In no event shall Subcontractor prevail upon any monetary claim or request for extension of time in connection with any individual or cumulative changes, matters, circumstances or conditions that have previously been addressed by a Change Order or other amendment executed by both parties. It is further expressly agreed that under no circumstances shall any failure or delay in giving such notice be excused, and no reservation of rights to make or submit a claim at a later date shall be effective to preserve the claim if not timely and properly made in accordance with this Paragraph. The provisions of this Paragraph shall not be deemed to establish or enhance any rights and/or remedies otherwise excluded by other provisions of this Subcontract or the Contract Documents, including without limitation the right to recover damages for delays, disruptions, interference and hindrance.
- 6.6 **In determining the sums payable to Subcontractor for changes arising hereunder,** costs for labor, machinery, fuel and materials shall be at pre-determined rates.
- 6.7 **If Contractor or Owner disputes the validity or amount of a Change proposal or any claim** submitted by Subcontractor or if a dispute exists between Subcontractor and Contractor concerning whether Work entitles Subcontractor to additional compensation and/or time extension but Contractor nevertheless directs Subcontractor to proceed with the disputed Work, Subcontractor shall promptly commence, prosecute and complete such Work pending resolution of the dispute. In such case, Subcontractor shall prepare and submit records to Contractor for review on a daily basis, to describe all such Work performed and with such detailed data as may be required to determine and verify Subcontractor's actual direct costs and/or time impact, if any, associated with such Work. Signature of Contractor's representatives upon such records shall be solely for the purpose of confirming review thereof and shall not itself constitute an Agreement by Contractor to make payment to Subcontractor based thereon.
- 6.8 **Only representative(s) specifically designated by Contractor in writing, in accordance with Paragraph 1.2 and 1.2.4 hereof,** shall have the authority on behalf of Contractor under this Subcontract to make economic decisions affecting Subcontractor to direct the actions of Subcontractor, to authorize changes in the Subcontractor's Work and to issue Change Orders or otherwise modify the terms of this Subcontract. Contractor may rely on the authority of any on-site or off-site managerial or supervisory employee or officer of the Subcontractor to bind the Subcontractor concerning such matters.
- 6.9 **Amounts payable to Subcontractor in respect of any type or nature of claims** arising under this Subcontract shall not include any actual or alleged consequential damages or other indirect or impact costs, such as, but not limited to: labor inefficiencies; extended or unabsorbed office overhead; loss of use; lost profits or income; and losses of financing, business opportunities and reputation.

ARTICLE 7 - DISPUTES

- 7.1 **Any decision or determination by the Owner or other party under the Contract Documents** that in any manner and by whatever means becomes binding upon Contractor shall also become equally binding upon Subcontractor insofar as it relates to or affects Subcontractor's Work or other obligations assumed or to be fulfilled by Subcontractor hereunder, including, without limitation, any damages, costs or other Subcontract adjustments claimed by Subcontractor or for which Subcontractor may be liable. Any award, judgment or Agreement in settlement of a dispute concerning such matters and resulting from arbitration, litigation or negotiations in which the Owner and Contractor are parties or participants shall be as binding upon Subcontractor and its surety as though Subcontractor and its surety were named and joined in such proceeding, provided that Subcontractor has been given a reasonable opportunity to join, participate, assist or provide supporting evidence in the presentation of any claim, defense or other issue in controversy that is settled or resolved thereby.
- 7.2 **No dispute shall interfere with the progress of the Subcontractor's Work,** and Subcontractor shall proceed with all Work, including disputed Work, despite the existence of, and without awaiting the resolution of, any such dispute.
- 7.3 **In any instance or proceeding whereby any claim, dispute or other matter in controversy between Contractor and Subcontractor** involves, arises from or gives rise to a similar claim, dispute or other matter in controversy as between the Contractor and Owner or another third party, Subcontractor shall furnish and present evidence, Documentation and other information to support its claim, defense or other position in respect thereof and shall pay or reimburse Contractor for all costs, fees and expenses associated with the negotiation, settlement, arbitration, litigation or other means undertaken to resolve such matter. It is expressly understood that as to any and all Work performed or agreed to be performed by the Subcontractor and as to any and all actual or alleged damages incurred by Subcontractor in connection with the Project, Contractor shall under no circumstances be liable to Subcontractor to any greater extent than Owner or other third party is found liable to Contractor.

ARTICLE 8 - GENERAL PROVISIONS

- 8.1 **To the fullest extent permitted by law, Subcontractor shall indemnify, hold harmless and defend Contractor, and Owner,** and all of their officers, directors, agents, employees and consultants, from and against all claims, damages, fines, penalties, losses and expenses, including attorney's fees, arising out of or resulting from the performance of Subcontractor's Work or the use of any products, materials, machinery or equipment furnished by Subcontractor, and caused in whole or in part by any negligent act or omission or non-performance hereunder by Subcontractor or anyone directly or

indirectly employed by him or anyone for whose acts he may be liable, regardless of whether it is caused in part by any negligent act or omission of a party indemnified hereunder. By way of illustration only, and without limiting the scope of the foregoing, Subcontractor's obligations under this Paragraph shall extend to claims, damages and expenses attributable to (a) bodily injury, sickness, disease, or death, (b) patent or other intellectual property infringement, (c) injury to or destruction of tangible property, including the loss of use resulting there from, and (d) actual or alleged violations of laws or regulations governing safety or environmental hazards or toxic substances. Furthermore, Subcontractor's obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under Worker's compensation acts, disability benefit acts or other employee benefit acts.

8.2 **To the fullest extent permitted by law, Subcontractor will save and keep the Project structures and improvements**, the real estate within which the Project is situated, the interests of the Owner and all other persons in such Project and real estate and the Contract proceeds or other monies now due or hereafter to become due and payable by the Owner to Contractor free from all statutory or common law liens and from any claims to establish the personal liability of the Owner or other third party to Subcontractor or to effect withholding or non-payment by Owner of Contract funds otherwise due and payable to Contractor, and Subcontractor hereby unconditionally waives any and all rights to any such liens or claims. If Subcontractor fails to remove any lien or claim against the Owner or Contract proceeds by any of its sub-Subcontractors, material suppliers or others for whom it is responsible, by bonding or otherwise as directed by Contractor, Contractor may retain sufficient funds out of any money due or thereafter to become due by Contractor to Subcontractor to pay the same and all costs incurred by reason thereof.

8.3.1 **Subcontractor shall recognize and comply with any and all labor Agreements** between Contractor and organized trade unions as applicable to the Project and shall be bound to all terms and conditions thereof, including payment of required hourly wages and fringe benefits, Work rules, trade jurisdictional determinations, Subcontracting requirements and, if necessary, signing a Project Agreement between Subcontractor and the union(s). If Subcontractor is a party to one or more union labor Agreements, Subcontractor represents that it has, prior to execution of this Subcontract, notified Contractor in writing as to the specific unions with which Subcontractor has entered into labor Agreements. Subcontractor will use best efforts to cooperate with the Contractor and any other affected parties to resolve any jurisdictional disputes that may arise during the prosecution of the Subcontractor's Work, and shall abide by the procedures contained in and any decisions rendered under any applicable plan for settlement of jurisdictional disputes. Subcontractor shall, in all cases, continue to Work while any jurisdictional dispute remains unresolved. Subcontractor shall Work in harmony with Contractor and all other Subcontractors to assure that no labor disputes of any kind involving the Contractor, Subcontractor or any other Contractors, Subcontractors or sub-Subcontractors, or their respective employees or agents shall occur or be manifested on the Project, and Subcontractor shall only employ persons on the Project who will Work at all times in harmony with other persons and trades employed on the Project. If Subcontractor has labor Agreements with any organized labor unions, Subcontractor shall Work in harmony with any and all Contractors, Subcontractors or sub-Subcontractors who employ personnel that are not represented by an organized union. Subcontractor shall not be relieved of its obligations under this Subcontract by any jurisdictional dispute, Work stoppage, slowdown or any other circumstances involving its employees that cause, create or aggravate any interference, delay, suspension or other form of impairment to performance or completion of any Work by any person on the Project. If any such Work stoppage, slowdown or any other action does occur due to any type of labor dispute or a picket line established for any reason, Subcontractor shall immediately adopt any and all measures (including, but not limited to, a separate gate) as necessary to eliminate and avoid delay or disruption to the Subcontractor's Work or any other Work of others at the Project. If a labor dispute involving the Subcontractor does occur and, in the judgment of Contractor or Owner, such dispute causes or threatens to cause delay or disruption to the orderly and efficient progress of construction, then such occurrence shall be deemed a default hereunder and just cause for termination of this Subcontract or other action or remedy permitted by the Contract Documents or applicable laws.

8.3.1 **Subcontractor shall abide by, recognize and respect any split gate, reserve gate or similar system on the Project** and agrees that the existence of a split gate, reserve gate or similar system shall not be grounds for any form of picket lines, strikes or walk-outs. Should any workers or employees of Subcontractor performing any work for the Project engage in a strike, boycott or other work stoppage or cease to work, due to picketing or a labor dispute of any kind or nature, whether involved with or caused by employees of Contractor, Subcontractor, any other subcontractor, supplier, trade, union or entity, the failure or refusal of those workers or employees to perform the Work of Subcontractor shall be considered as a default under this Subcontract, and the remedies for defaults set forth in ¶8.3 and elsewhere herein shall apply. Subcontractor, as a condition of entering into this Subcontract, represents that it has obtained any and all requisite consents from any labor union, labor organization or union representative involving Subcontractor's Work to the terms and conditions of ¶8.3 and ¶8.3.1 hereof, and Contractor shall be entitled to rely upon such representations and consents having been obtained as a condition for Subcontractor executing this Subcontract and performing hereunder.

8.4 **Subcontractor shall not Subcontract, or transfer this Subcontract or** any part thereof or amounts due or to become due hereunder without the prior written consent of the Owner.

8.5 **No action or failure to act by the Owner or Contractor shall constitute a waiver of any right** or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

8.6 **Written notice shall be deemed to have been duly served if delivered in person** to the individual or member of the firm or entity or to an officer of the Corporation or Subcontractor's authorized representative for whom it was intended, or if delivered at or sent by registered or certified mail, Federal Express or UPS next day service or if transmitted and received by facsimile telephone transmission (FAX), to the last business address or fax telephone number known to him who gives the notice.

8.7 **Should either party to the Subcontract suffer injury or damage to person or property** (other than to the Subcontractor's Work) because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within five (5) calendar days after the injury or damage was made known to the party making claim. This Paragraph shall not apply to injury or damage to property caused by or resulting from breach of warranty or duty to correct defective Work as provided elsewhere in this Subcontract.

8.8 **Subcontractor acknowledges the right of the Contractor to assign all or any portion of this Subcontract**, including the assignment or subrogation of rights and remedies arising hereunder, including warranties, to the Owner or other third party. Contractor shall furnish written notice of any assignment to Subcontractor and upon Subcontractor's receipt thereof, the assignee shall succeed to the rights and obligations of Contractor under this Subcontract and under any surety bond furnished by Subcontractor, without recourse by Subcontractor against Contractor, except as such notice of assignment may otherwise provide.

8.9 **To the fullest extent permitted by law, this Subcontract shall be governed by the laws of the State of Indiana.** Subcontractor and Contractor expressly agree that any dispute hereunder requiring legal or equitable proceedings, whether in a court of law, arbitration or other alternative dispute proceedings, shall be conducted and determined in _____ County, State of Indiana and that such county and state are the agreed venue, locale and jurisdiction for such proceeding, arbitration or lawsuit. Subject to the provisions of Paragraph 10.1.4 hereof if Contractor selects arbitration as provided therein, Contractor and Subcontractor further agree that any such alternative dispute proceeding or lawsuit to be brought in a court of law or equity shall be brought in the _____ Circuit or Superior Court, and Subcontractor consents to both personal and subject matter jurisdiction therein.

ARTICLE 9 - TERMINATION AND OTHER REMEDIES

- 9.1 **If Subcontractor fails to correct any defective or nonconforming Work** as required or persistently fails to carry out Work in accordance with the Contract Documents, Contractor may, in addition to any other right or remedy afforded by this Subcontract, issue a written order to Subcontractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, Contractor's right to stop the Work shall not give rise to a duty on the part of Contractor to exercise such right for the benefit of Subcontractor or other persons or entities.
- 9.2 **If Subcontractor refuses or neglects to supply an adequate quality or quantity of Workers**, supervision, materials, equipment, services or facilities, or fails in any respect to prosecute the Subcontractor's Work with promptness, diligence and in accordance with the Contract Documents, or fails to perform and fulfill any other obligations arising there under, Contractor may upon 2 days (48 hours from post mark) written notice to Subcontractor, and without prejudice to any other remedy Contractor may have, take such steps as Contractor may deem advisable (to include subcontract assignment and/or supplementation) necessary or expedient to correct or otherwise address such refusal, neglect or failure. Contractor may deduct any cost incurred for such corrective action, including an allowance of 15% for overhead and profit, from any money due or thereafter to become due from Contractor to Subcontractor as well as and in addition to invoking liquidated damages. Any such refusal, neglect or failure by Subcontractor shall also constitute grounds for default termination by Contractor as provided in Article 9 of Section 2.
- 9.3 **Contractor shall have the right at any time, upon 48 hours prior written notice to Subcontractor, to terminate this Subcontract in whole or in part** and require Subcontractor to cease Work there under; such termination shall be rightful as against Subcontractor whether undertaken because of Subcontractor's default or for the convenience of the Owner or Contractor. If termination is for default, the respective rights and obligations of the parties shall be as provided in Paragraph 9.4. If termination is for the convenience of Contractor or Owner, or if the Subcontract is terminated upon Contractor's belief that Subcontractor is in default but it is subsequently determined that Subcontractor was not then in default, the rights and obligations of the parties shall be as provided in Paragraph 9.5.
- 9.4 **If Subcontractor at any time (i) refuses or neglects to supply adequate and competent supervision** or a sufficiency of properly skilled Workmen or of materials of the proper quality or quantity, or (ii) fails in any respect to prosecute the Work with promptness and diligence or otherwise in accordance with the Contract Documents, or (iii) fails in the performance of any Agreement or obligation on its part herein contained or provided by the Contract Documents, or (iv) otherwise delay the Work of Contractor, other Subcontractors or other third parties, or (v) is otherwise in default as defined by the provisions of the Contract Documents as applicable to the right of the Owner or other third party to terminate its Contract with Contractor, or if any of the above stated events or conditions of default shall exist under any uncompleted separate or additional Subcontract between Subcontractor and Contractor, whether for this Project or any other project, then Contractor may terminate the employment of Subcontractor on the Project upon the grounds of Subcontractor's default, whereupon Contractor shall have the right in addition to such other rights and remedies as may be afforded to Contractor under this the Contract Documents, or by law, to enter upon the premises and take possession of Subcontractor's materials, equipment, tools and appliances of any kind whatsoever, and to employ or Contract with one or more other persons or use its own forces to finish the Subcontractor's Work and/or to correct or take other action to bring the Subcontractor's Work into conformity with the requirements of the Contract Documents. In such case Subcontractor shall not be entitled to receive any payment under this Subcontract which might otherwise be due it until the Subcontractor's Work shall be finished and payment in full therefore shall be made by Owner to Contractor, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the expenses incurred by Contractor in completing and correcting Subcontractor's Work, plus any costs and damages sustained by Contractor by reason of such failure or lack of performance by Subcontractor, including attorney's fees, costs of administration, and an allowance of 15% for overhead and profit, such excess shall be paid by Contractor to Subcontractor, but if such expense plus costs and damages shall exceed such unpaid balance, Subcontractor and its sureties shall be liable to Contractor for such deficiency. A determination of default made by Contractor in good faith under the belief that a default exists under the terms hereof, shall be conclusive on the fact of such default and on Contractor's right to proceed as provided in this Paragraph.
- 9.5 **If this Subcontract is terminated for the convenience of Contractor**, or if terminated upon Contractor's belief that Subcontractor is in default but Subcontractor is not then in default, then Contractor shall pay to Subcontractor an amount limited to the unpaid Subcontract value of authorized and approved Work performed by Subcontractor prior to notice of termination, adjusted for amounts and damages, if any, for which Subcontractor is liable or which the Contractor is entitled to retain and withhold pursuant to the terms of this Subcontract. Recovery by Subcontractor of lost anticipated profit, overhead, or other direct, indirect or consequential damages relating to portions of Subcontractor's Work not performed under the uncompleted portions of this Subcontract are hereby specifically excluded. The payment provided by this Paragraph shall constitute Subcontractor's exclusive remedy in the event of such termination. A termination caused by disapproval of Subcontractor by Owner or other third party shall not entitle Subcontractor to recover termination expenses under this Paragraph.
- 9.6 **In any instance whereby Contractor is entitled, under the terms of this Subcontract**, to be indemnified by or recover any monies from Subcontractor, Contractor shall be entitled to, in addition, recover from Subcontractor (i) interest on any sums due from Subcontractor at the rate of twelve percent (12%) per annum to accrue from the date due until paid, notwithstanding any dispute or uncertainty concerning the means or standards by which the amount of monetary recovery is to be ascertained, (ii) reasonable attorney's fees incurred by Contractor for all investigation, negotiation, litigation, arbitration and other such services commonly performed by attorneys, and (iii) all court costs, fees paid to experts, arbitration fees and like expenses.
- 9.7 **This Subcontract contains the entire integrated Agreement between the parties.** Any executory Agreement hereafter made shall be ineffective to change, modify or discharge this Subcontract in whole or in part, unless such executory Agreement is in writing and signed by both Contractor and Subcontractor. All verbal or written negotiations, Agreements and representations made or conducted by or between either party prior to the date of this Subcontract are hereby voided and shall not serve to supplement, vary or contradict the terms hereof. Furthermore, if this Subcontract is made and executed before the Prime Agreement has been executed by the Owner and Contractor, then such execution of the Prime Agreement by Contractor and Owner shall be deemed a condition precedent to this Subcontract becoming effective and binding upon Contractor or to any rights or claims by Subcontractor in respect of any Work performed for the Project.

ARTICLE 10 - SPECIAL PROVISIONS

10.1 Arbitration of Certain Disputes

.1 At Contractor's sole option and choice, claims, disputes and other matters in controversy arising out of or related to this Subcontract, or the performance or breach thereof, may be decided by arbitration. If Contractor elects arbitration, then it shall be mandatory upon Subcontractor. Such arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to modifications set forth herein, **, or, at Contractor's option**, an arbitration tribunal other than the American Arbitration Association may be selected to administer the arbitration.

.2 This Paragraph shall not be construed to require Contractor under any circumstances to submit to arbitration any claim, dispute or other matter involving, arising from or giving rise to (i) a claim by or against the Owner or other third party

unless the Owner or such third party is subjected to the jurisdiction of, or consents in writing to be joined as a party to the arbitration between Contractor and Subcontractor, (ii) termination of this Subcontract, (iii) claims which have been waived by the making or acceptance of final payment as provided by Paragraph 5.13, or (iv) costs or damages sustained or claimed by Subcontractor because of delay, hindrance or suspension of Work or any other act, omission, condition or occurrence in respect of which any of the provisions of this Subcontract or other Contract Documents deny or limit Subcontractor's rights of claim or recovery.

.3 If Contractor selects arbitration, then the arbitrator(s) may decide only the issues presented to them and may not vary or disregard any terms of this Subcontract or the Contract Documents.

.4 Unless Contractor decides an alternative locale at its option, the hearing and other administrative conferences pertaining to the arbitration shall take place in _____City, _____ County, Indiana. If Contractor selects a different locale for the arbitration proceeding, then it shall furnish written notice thereof to Subcontractor and the administrative tribunal, which selection shall be binding on the parties and conclusive on the issue of the hearing locale.

.5 No Documentary evidence shall be admissible in any arbitration hearing unless copies thereof are furnished to the opposing party at least thirty days prior to the date of commencement of the hearing. Furthermore, no witness shall be called to testify or heard at the hearing unless that witness is identified in writing to the opposing party at least thirty days prior to the date of commencement of the hearing. The arbitrator(s) shall have no authority to waive or disregard this requirement without the written consent of Contractor and Subcontractor.

.6 This Agreement to arbitrate shall be binding upon the parties and judgment may be entered upon the arbitration award in accordance with applicable law in any court having jurisdiction thereof. The arbitration award shall be as binding upon Subcontractor's sureties as if such sureties were named and joined in the arbitration proceeding and, at Contractor's option, such sureties may be joined as parties therein.

This Subcontract is not valid unless signed by both Contractor and Subcontractor and shall become effective (prospectively or retrospectively) on the date stated on the first page hereof. Furthermore, if this Subcontract is executed by Contractor and delivered to Subcontractor for signature, it shall be deemed an offer to contract and Contractor may withdraw such offer if Subcontractor's signed acceptance is not received by Contractor within 14 days after the date stated on the first page of this Subcontract. Any acceptance by Subcontractor purporting to add, delete or otherwise alter the terms hereof as submitted by Contractor shall have no force or effect except as otherwise separately and expressly agreed to in writing (see exhibit "C") by Contractor. "Cross outs" and other physical alterations or attempts to alter this subcontract are not acknowledged or binding.

Contractor:

Subcontractor:

DC Construction Management LLC

By (Signature): _____

By (Signature): _____

(Printed): _____

(Printed): _____

(Title): _____

(Title): _____

Date: _____

Date: _____

END OF SUBCONTRACT -- SEE ATTACHED EXHIBITS FOR ADDITIONAL PROVISIONS AND REQUIREMENTS INCLUDED AS A PART OF THE SUBCONTRACT AGREEMENT

