



GLJ Builders West, L.P.
5780 Fleet Street, Suite 130
Carlsbad, CA 92008
760.431.3366 phone, 760.431.3377 fax
CA License # B906444

SUBCONTRACT AGREEMENT

Subcontractor
Address
Phone
Fax

Job Number
Job Name
Contract #
Trade

This Subcontract Agreement ("Agreement" or "Subcontract") is entered into at Carlsbad, CA, effective as of _____ and between **GLJ Builders West**, a California Limited Partnership ("Contractor"), and _____, a California Corporation ("Subcontractor").

WITNESSETH: On or about _____, Contractor entered into an agreement with GLJ Development Company West, LLC hereinafter referred to as Owner, providing for the construction of "Apartment Units and Clubhouse Buildings" in accordance with the plans and specifications prepared therefor ("Prime Contract"). Subcontractor acknowledges that he has reviewed and is familiar with said plans and specifications.

IT IS AGREED AS FOLLOWS:

Subcontractor agrees to furnish, at its own cost and expense, all equipment, labor, materials, supplies and other things necessary to perform and complete in accordance with this Agreement, the attached exhibits, the Subcontract Documents (as defined in Section 2 of the attached Terms and Conditions), plans, specifications, general conditions, addenda and modifications thereto, the following portions of the above Prime Contract and all work incidental thereto: _____, and as more particularly specified in Exhibit "B" (Scope of Work).

SEE ATTACHED EXHIBITS:

EXHIBIT A: PLAN LIST AND OTHER DOCUMENTS DATED _____
EXHIBIT B: SCOPE OF WORK SUMMARY DATED _____
EXHIBIT C: BILLING PROCEDURES
EXHIBIT D: PROJECT SCHEDULE DATED _____
EXHIBIT E: INSURANCE REQUIREMENTS DATED _____
EXHIBIT F: CONTRACTOR VERIFICATION
EXHIBIT G: SUBCONTRACT DOCUMENTS
EXHIBIT H: SCHEDULE OF VALUES

Subcontractor agrees that it will meet any project schedule as dictated by Contractor, even if inconsistent with the Project Schedule attached as Exhibit "D."

THE CONTRACT AMOUNT IS: _____ \$ _____ .00

Payments shall be made on a monthly basis and shall be based on completion percentage with 10% retained; all such payments shall be made in accordance with Section 6 of the attached Terms And Conditions.

If Owner and Contractor execute this Agreement prior to execution of the Prime Contract, it is done in contemplation of the execution of such Prime Contract. If Owner and Contractor fail to enter into a valid agreement within 90 days from the date of this Agreement, this Agreement shall be of no effect.

The execution of this Agreement implies acceptance of all exhibits listed, general conditions, the attached safety program and all documents referred to in Section 2 of the Terms And Conditions.

If Subcontractor fails to return an executed copy of this Agreement to Contractor within ten (10) days after execution by Contractor, Contractor may terminate any and all rights of Subcontractor to perform the work herein described by written notice sent by ordinary mail to the address of Subcontractor shown hereon; and Contractor shall have the right, at its option, to enter into an agreement with another subcontractor for the performance of said work, or any portions thereof, or to perform such work itself, without prejudice, however, to Contractor's right to recover any damages suffered by reason of Subcontractor's failure to execute this document.

Subcontractor shall not perform any of the work until both parties have executed this Agreement. If Subcontractor should perform work prior to execution of this Agreement, such performance of work shall be without prejudice to Contractor's right to terminate further performance by reason of Subcontractor's failure to sign and return this Agreement to Contractor within the time stated herein, and this Agreement, as submitted to Subcontractor, shall govern the parties' rights as to all work performed.

This Agreement is subject to the terms and conditions set forth in Sections 1 to 45, inclusive, attached hereto and made a part hereof. If any sections are inserted herein subsequent to Section 45, such sections shall be initialed by the parties and become a part of this Agreement.

IF SUBCONTRACTOR IS A SOLE PROPRIETOR OR A PARTNERSHIP, THE OWNER OR THE PARTNERS/MEMBERS OF THE FIRM MUST SIGN THIS AGREEMENT. IF SUBCONTRACTOR IS A CORPORATION, BOTH THE PRESIDENT AND THE SECRETARY OF THE CORPORATION MUST SIGN THIS AGREEMENT ON BEHALF OF THE CORPORATION.

GLJ Builders West, L.P.
5780 Fleet Street, Suite 130
Carlsbad, CA 92008
760.431.3366 phone, 760.431.3377 fax

This entire Agreement is Accepted and Approved by:

CONTRACTOR

GLJ Builders West, LP. _____

By: _____
Tony Ditteaux

Date: _____

Its: Vice President _____

By: _____
Garth Erdossy

Date: _____

Its: President _____

SUBCONTRACTOR

By: _____

Date: _____

Its: _____

By: _____

Date: _____

Its: _____

SUBCONTRACT AGREEMENT
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TERMS AND CONDITIONS

1. INDEPENDENT INVESTIGATION BY SUBCONTRACTOR.

Subcontractor represents that he has thoroughly examined all portions of the plans and specifications, that he has examined the site of the work, and that he has ascertained for himself all job conditions and all provisions of the plans and specifications that relate to the performance of the work required by this Agreement. Subcontractor represents that he is entering into this Agreement in reliance upon his own information and investigation and that he has not relied upon statements, opinions or representations, if any, of Contractor or its agents, employees or consultants. Contractor may obtain other bids to perform the work specified in this Agreement and such bids may be higher in amount than the price herein provided or allowed for such work. Subcontractor waives and releases all claims, if any, based on Contractor's failure or refusal to disclose to Subcontractor other bids received by Contractor prior to execution of this Agreement.

2. THE SUBCONTRACT DOCUMENTS.

The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other contract documents enumerated therein, including conditions of the contract (general, supplementary and other conditions), drawings, specifications, addenda issued prior to execution of the Prime Contract between the Owner and Contractor and modifications issued subsequent to the execution of the agreement between the Owner and Contractor, whether before or after the execution of this Agreement, and other Contract Documents, if any, listed in the Prime Contract; (3) other documents listed in the face page of this Agreement; and (4) modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than modifications issued subsequent to the execution of this Agreement, appears in Exhibit "G". The Subcontractor shall be furnished copy of the Subcontract Documents upon request, but the Contractor may charge the Subcontractor for the cost of reproduction. The Subcontractor shall be bound by the terms of this Agreement and, to the extent that provisions of the Prime Contract apply to the Work of the Subcontractor, the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under the Prime Contract, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under the Prime Contract, has against the Contractor. Where a provision of the Prime Contract is inconsistent with a provision of this Agreement, this Agreement shall govern. The Contractor may require the Subcontractor to enter into agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the sub-subcontractor, assuming toward each other all obligations and responsibilities which the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other which the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

3. SCOPE OF WORK.

The scope of the Work under this Agreement is described (i) on page 1 of this Agreement, (ii) on Exhibit "B" attached hereto, and (iii) in part by reference to certain sections of the specifications and certain sheets of the plans; this reference shall extend to and include all work falling within the general description of the identified sections and sheets that may be described in any other section of the specifications or any other sheet of the plans, and such description shall not be deemed to limit the obligation of Subcontractor to furnish only labor and materials described in the identified sections or sheets. Subcontractor acknowledges that he has examined all of the plans and specifications for the project to determine the full scope of the Work to be performed under this Agreement inasmuch as the Work may not be described or fully described in the identified sections and sheets.

4. CONTRACT PRICE AND ADJUSTMENTS.

Contractor shall pay to Subcontractor the sum indicated on page 1 for all labor, materials, equipment and other items that Subcontractor is obligated to perform and furnish under this Agreement. The contract sum shall be subject to adjustment for any changes in the Work. The obligation of Contractor to increase the amount to be paid to Subcontractor for changes in the Work shall be limited to such amount as the Contractor receives from the Owner for such changes, less amounts allowed for Contractor's overhead, profit, bond premium and work performed by Contractor or others in connection therewith. Deductions in the contract price for change shall be limited to the reduction made by Owner. Contractor may omit any work that is not necessary for completion of the Work as a whole, and there shall be an equitable deduction therefor without regard to any adjustment in the Prime Contract price. If the Prime Contract does not provide for a separate allowance to Contractor for overhead and profit upon extra work in addition to that chargeable by Subcontractor for such work, the amount allowable under the Prime Contract for overhead and profit shall be divided equally between Contractor and Subcontractor.

5. TAXES.

Subcontractor shall pay all taxes, licenses and fees of every nature that may be imposed or assessed upon labor, material or other things used in the performance of the Work or upon the transaction between Contractor and Subcontractor. If Subcontractor fails to pay any such tax, license or fee, Contractor may pay the same and Subcontractor shall immediately reimburse Contractor for such payment.

6. PAYMENTS.

Payments to Subcontractor for Work which conforms to Prime Contract requirements are to be made in monthly installments on or about the 30th day of the month for Work performed to the last day of the preceding month in an amount equal to the percentage indicated on page 1 of the value of the Work performed by Subcontractor during the preceding calendar month. Subcontractor must submit to Contractor application for payment by the 25th day of the month for Work performed and to be performed through the end of that month. If the Prime Contract provides a cutoff date for making progress payments that is earlier than the last day of the month, such earlier date shall be deemed substituted for the last day of the preceding month. Contractor may, if he elects, pay for Work performed prior to the time payment is due under this Agreement. The value of the Work performed by Subcontractor is to be determined by reference to the contract price, but shall not exceed the lesser of Subcontractor's costs actually paid or, on a percentage basis, the Owner's allowance therefor for which payment has been received by Contractor. Subcontractor shall furnish to Contractor, upon request, complete information as to all costs actually paid by Subcontractor and the costs that will be incurred by Subcontractor in completing the Work. The estimate of Owner or its agents, or the estimate of Contractor if Owner makes no separate estimate, as to the amount of work done by Subcontractor shall be binding upon Subcontractor. The retention provisions shall apply to sums earned by Subcontractor for extra work. The retainage indicated on page 1 less any deductions permitted by this Agreement shall be paid 35 days after notice of completion is recorded, final signoffs and approval from the applicable governmental agencies are obtained and acceptance by Owner of all of the Work under the Prime Contract or within ten (10) days after such final payment is received by Contractor from Owner, whichever date is later.

In no event shall any progress payment or other payment to Subcontractor be payable prior to the 10th working day following receipt of such payment by Contractor from Owner, such receipt by Contractor being a condition precedent to Contractor's obligation to make payment to Subcontractor. If Owner delays making any progress payment or the final payment on the project by reason of any dispute arising out of the construction of the project, whether or not the dispute involves Subcontractor's work, the obligation of Contractor to make payment to Subcontractor shall be deferred until said dispute is resolved and payment is received by Contractor. Contractor's obligation to make payment to Subcontractor is limited to payments actually received by Contractor from Owner with respect to Subcontractor's work. Contractor is not required to pay

Subcontractor for any work for which Contractor has not received payment from Owner. Subcontractor understands, acknowledges and agrees to accept the risk that it will not be paid for work it performs and materials it furnishes and that it will not receive retainages if the Contractor is not fully paid by or receives all retainages from Owner for any reason whatsoever including, but not limited to, Owner's bankruptcy or insolvency, contractor negotiations with the Owner, arbitration, litigation, appeals, administrative action, or other similar activity. Subcontractor warrants that he will look to and solely rely upon the credit and ability of the Owner and not of Contractor for payment for work performed and materials furnished by Subcontractor, including retainages.

Contractor is authorized to represent to Owner, prior to the making of final payment hereunder, in such form as may be required by Owner, that all bills for labor, materials or other items furnished by Subcontractor have been paid where this is necessary to obtain final payment under the Prime Contract.

Subcontractor shall pay all obligations incurred in the performance of this Agreement. Before receiving any payment and as a condition thereof, Subcontractor shall furnish evidence satisfactory to Contractor that all costs, union fringe benefits (if applicable) and tax obligations incurred by Subcontractor in the performance of this Agreement for which any person has the right to file a mechanic's lien, stop notice or an action upon any bond executed by Contractor as principal, have been paid. Subcontractor shall furnish to Contractor releases of lien, stop notice and bond rights from all persons who have such rights, including, without limitation, full and complete releases and final unconditional releases, and no payment shall become due to Subcontractor unless, and until, such releases are furnished.

Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor and materials, and agrees to furnish same from its subcontractors, suppliers and/or materialmen performing work or furnishing materials under this Agreement, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of its subcontractors, suppliers and/or materialmen who have performed work or furnished materials under this Agreement. Any payment made hereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance or acknowledgment of completion of any part of Subcontractor's work.

Contractor may deduct from any amounts due or to become due to Subcontractor all sums owing by Subcontractor to Contractor whether or not then due to Contractor. If Subcontractor is in default under this Agreement, Contractor may reserve from amounts due or to become due to Subcontractor such amounts as Contractor deems necessary to protect Contractor from loss, damage or expense by reason thereof.

It is understood and agreed that the full and faithful performance of this Agreement on the part of Subcontractor (including the payment of any obligations due from Subcontractor to Contractor, and any amounts due to labor or materialmen furnishing labor or material for said work) is a condition precedent to Subcontractor's right to receive payment for the work performed.

Contractor may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and actual attorneys' fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to its subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with state, federal or local laws and regulations; or (7) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement.

When the above matters are rectified, such amounts then due and owing shall be paid or credited to Subcontractor.

7. TRUST OBLIGATION. All sums received by Subcontractor from or on behalf of Contractor shall be held by Subcontractor in trust for the express use and purpose of paying costs, union fringe benefits (if applicable) and tax obligations incurred in the performance of this Agreement for which any person has the right to file a mechanic's lien, stop notice or an action upon any bond executed by Contractor as principal, and Subcontractor shall have no title to such sums, or any part thereof, until such obligations have been paid.

8. SCHEDULE OF WORK; JOB DELAYS. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of its work in a form acceptable to Contractor. Subcontractor will at all times keep himself fully informed as to the progress of the Work on the project and the progress schedule for the project as a whole, and as soon as the project requires the performance of work under this Agreement for its continued progress, Subcontractor will promptly commence the Work. Subcontractor's failure to commence the Work when directed by Contractor is a breach of this Agreement, and Contractor shall have the right, without notice, to terminate this Agreement and hold Subcontractor liable for all damages caused by such breach. Time is the essence of this Agreement. Subcontractor will prosecute the Work diligently to completion and conform to Contractor's progress schedule and any modifications thereof. In the event Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the work as Contractor may direct until Subcontractor's work is in accordance with such schedule. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the project. If the Subcontractor should default in performance of the Work or should otherwise commit any act which causes delay to the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including, without limitation, consequential damages and liquidated damages sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

Work shall be performed at such points and in the sequence directed by Contractor. Subcontractor will coordinate the Work with Contractor and other subcontractors so that there will be no delay or interference with other work on the project or in the completion of the project as a whole. Damages and increased costs suffered by Contractor attributable to delay caused by more than one subcontractor shall be allocated by Contractor between the various subcontractors responsible therefor, and Contractor's allocation shall be binding on all parties.

Should the performance of Subcontractor be delayed by reason of strike or other cause beyond the control of Subcontractor, Contractor may terminate this Agreement by notice in writing. Contractor shall pay Subcontractor the reasonable value of all work properly performed, but such payment shall not exceed the allowance for such work.

Should Subcontractor be delayed in the prosecution or completion of the Work by the act, neglect or default of Owner, Owner's representative or Contractor, or should Subcontractor be delayed waiting for materials, if required by this Agreement to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from default or collusion on the part of Subcontractor, or in the event of a lockout by Contractor, then the time herein fixed for the completion of the Work shall be extended the number of days the Subcontractor has thus been delayed as determined by Contractor in its sole discretion; but no allowance or extension shall be made unless a claim therefor is presented in writing to Contractor within two (2) working days after commencement of such delay. The request for time extension shall describe the acts causing the delay

or interference and the manner in which Subcontractor's performance has been affected thereby.

No claims for additional compensation or damages for delays caused by the act, neglect or default of Owner, Owner's representative or Contractor, or delays caused by other subcontractors, or other cause hereinabove set forth, will be allowed by the Contractor, and the said extension of time for completion of Subcontractor's work shall be the sole and exclusive remedy of Subcontractor; provided, however, that in the event and in such event only, that Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances as determined solely by Owner. Nothing contained herein shall require Contractor to make any claims against Owner, Owner's representative or other person for such delays, and it is specifically agreed that the failure of Contractor to prosecute any such claim shall not entitle Subcontractor to any claim for damages against Contractor.

9. PROCUREMENT OF MATERIALS. Subcontractor shall order all materials, equipment and other items, which shall be required for the performance of the Work hereunder. Contractor may request Subcontractor to submit a list of suppliers from whom Subcontractor proposes to purchase the materials, equipment and other items that will be required by Subcontractor in the performance of this Agreement, together with documentary evidence satisfactory to Contractor indicating that all such materials, equipment and other items will be available in sufficient time to avoid delay in the prosecution of the project as a whole. Subcontractor's failure to furnish any or all of the information required to be furnished under this paragraph within three (3) working days after request thereafter by Contractor shall constitute a breach of this agreement.

10. MEASUREMENTS AND RELATED WORK. Subcontractor shall have the sole responsibility to determine all lines, grades, measurements and job conditions applicable to the Work performed under this Agreement. Subcontractor shall measure and inspect work and materials already in place that affect the Work. Unless Subcontractor notifies Contractor in writing prior to the performance of the Work that work and materials already in place are not in accordance with the Plans and Specifications for the project, Subcontractor shall be deemed to have approved the work and materials already in place as being satisfactory to receive the Work.

11. EXTRA WORK AND CHANGES. Subcontractor shall make no changes in the Work to be performed under this Agreement, whether by way of deduction, addition or substitution, nor shall the terms of this Agreement be changed in any other respect, unless, prior to any such change, the parties shall have executed a written agreement therefor. Subcontractor shall perform no extra work without the prior written order of Contractor. The foregoing requirement for a written order authorizing changes or extra work is a condition precedent to the maintenance of a claim of any nature by Subcontractor for the furnishing of labor, materials or equipment therefore or for any other claim based on a change in the terms of this Agreement. Strict observance of said condition shall not be deemed to have been excused by claim of waiver, estoppels, executed oral agreement abandonment, abrogation, course of conduct, unjust enrichment, or other acts or conduct of any nature. It is the express intent of this provision that Contractor shall in no event be subjected to a claim of any nature for changes or extra work in the absence of a prior written agreement signed by an authorized representative of Contractor. Subcontractor waives all claims based on the provision of Civil Code Section 1698 and Uniform Commercial Code Section 2209 to the extent that these code sections permit modification of a written contract by acts or conduct other than written agreement signed by an authorized representative of Contractor.

12. CLAIMS. ~~All provisions of the Prime Contract relating to claims or disputes between Contractor and Owner are incorporated into this Agreement. Subcontractor shall assume toward Contractor all of the obligations and responsibilities that the Contractor, under the Prime Contract, assumes towards the Owner with respect to all~~

~~claims and disputes. Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner by all decisions, rulings and interpretations of the Owner or his authorized representative affecting the Work to be performed under this Agreement. The procedures established by the Prime Contract for the determination of claims and disputes shall be binding upon Subcontractor, and the final determination of such disputes in accordance with the procedures established by the Prime Contract shall be binding and conclusive upon Subcontractor. Subcontractor shall not prosecute or maintain any action against Contractor or against the surety upon any bond upon which Contractor is principal, or request arbitration with respect to any such claim or dispute until the procedures for determination of disputes under the Prime Contract have been concluded.~~

If Subcontractor claims that he is entitled to additional compensation other than for changes and extra work for which written authorization has been given prior to the performance thereof, or if Subcontractor disputes any determination made by Owner or Owner's representative, or if Subcontractor claims damages by reason of any act of Owner or his authorized representative, he shall prepare his claims in accordance with all requirements of the Prime Contract. Subcontractor, at his own cost and expense, shall designate a person who shall work with Contractor in presenting the claims of Subcontractor, in accordance with the procedures established by the Prime Contract. Subcontractor shall conduct all such proceedings with the cooperation of Contractor and at the sole cost and expense of Subcontractor. Subcontractor shall hold harmless, defend, protect and indemnify Contractor against all costs of arbitration, suit, attorneys' and other items of expense connected with such proceedings, and Contractor shall have the right to demand that Subcontractor deposit with Contractor, as security against any loss, damage or expense of Contractor in connection therewith, an amount which Contractor deems sufficient for such purpose. Failure of Subcontractor to deposit such security shall give Contractor the right to terminate any proceedings then pending upon such terms as Contractor deems proper, and Subcontractor does hereby waive any claims against Contractor by reason of such termination of proceedings.

Subcontractor shall have no right to receive payment from Contractor upon any such claims in any sum greater than that received by Contractor from Owner. Contractor shall have the right to retain 15% of any amount allowed by Owner or recovered upon claims of Subcontractor for Contractor's costs and services performed by Contractor in presenting Subcontractor's claims.

If Subcontractor disputes any determination by Owner, Owner's representative or Contractor that any item of work is included in the contract price established by this Agreement, or if Subcontractor does not agree to the allowance proposed to be made for disputed work or work ordered as extra work, Subcontractor shall, nevertheless, upon written instruction of Contractor, immediately proceed to perform such work. The written instruction of Contractor shall not obligate Contractor to pay for such disputed or extra work. The obligation to pay for disputed or extra work shall be determined in accordance with the provisions herein, or if the above provisions are for any reason inapplicable, by arbitration as provided by Section 24.

All claims of Subcontractor for loss, damage, or extra or disputed work shall be made by notice in writing to Contractor within two (2) working days from the date Subcontractor first sustains any portion of such loss or damage or receives written instructions to proceed with such extra or disputed work. Subcontractor shall submit on Monday of each week an itemized statement of the details, basis of computation, and amounts of such claims, broken down on a daily basis, of costs and expenses incurred during the preceding week. Subcontractor shall show the total cost incurred in performing such work and the allocation of such costs between work for which Subcontractor claims additional compensation and work compensated by the contract price. Said written notice shall state in full detail all grounds upon which Subcontractor's claim is based. Subcontractor shall, as a condition of his right to enforce any such claims, give said written notice and furnish said weekly itemized statements, and Subcontractor does hereby release any and all

claims as to which such conditions have not been satisfied and waives any right against Owner, Contractor and Contractor's sureties with respect to the same.

13. INSURANCE. The Subcontractor shall purchase and maintain insurance that is consistent with Contractor's insurance obligations under the Prime Contract. Notwithstanding the above, Subcontractor shall purchase and maintain, at a minimum, insurance in accordance with the requirements and obligations as described in Exhibit "E".

The insurance carriers shall be subject to Contractor's approval. Coverage's, whether written on an occurrence or claims made basis, shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment. Contractor and Owner shall be named as additional insured parties on all policies. Notwithstanding anything to the contrary contained in the Subcontract Documents, Contractor's commercial general liability insurance shall be on an occurrence form basis and claims made coverage shall not be acceptable.

Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Work. These certificates and the insurance policies shall contain a provision that coverage's afforded under the policies will not be cancelled, reduced or allowed to expire until at least (30) days' prior written notice has been given to the Contractor. If any foregoing insurance coverage's are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Section 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief. If Subcontractor fails to maintain any insurance coverage required under this Agreement, Contractor, at its option and without obligation to do so, may maintain such coverage and charge the expense to Subcontractor, or terminate this Agreement.

The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance as described in Exhibit "E" or as required of the Contractor under the Prime Contract, as appropriate pursuant to the requirements of Section 13. The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other; and (2) the owner, the Architect, the Architect's consultants, separate contractors and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as fiduciary. The Subcontractor shall require of his sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in the property damaged

14. DEFAULT OF SUBCONTRACTOR. Should Subcontractor default in the performance of any obligation imposed on him by this Agreement, Contractor shall give notice of such default to Subcontractor. Failure of Subcontractor to cure such default within two (2) working days shall give Contractor the option of:

(1) Without terminating this Agreement or the obligations of Subcontractor hereunder, at Subcontractor's expense, performing such portion of the Work required hereunder, or furnishing any material, equipment, or other item required hereunder, as Contractor, in his sole discretion, may deem necessary to avoid delay of the project. Contractor may

perform such Work, or any portion thereof, or have the same performed by others; and

(2) Terminating this Agreement and the further option of (a) completing the Work, or any portion thereof, himself, or (b) having the Work, in whole or in part, completed by others.

The options given to the Contractor herein shall not be deemed limitations upon the rights and remedies of Contractor. Contractor shall be entitled to exercise the rights and remedies specified in this Agreement, and all other rights and remedies, which may be permitted by law either cumulatively or consecutively, and in such order as Contractor, in his sole discretion, shall determine.

Subcontractor shall be liable for all costs incurred, including attorney's fees, and damages of every nature suffered by Contractor by reason of Subcontractor's default; and exercise of the option by Contractor to terminate this Agreement shall not relieve Subcontractor of such liability. Subcontractor shall have no right to receive payment after he is in default until such time as the Work has been completed and the Contractor's damage ascertained. Under any of the options, remedies, and rights given to Contractor by this Agreement in the event of the default of Subcontractor, Contractor may, but shall not be obligated so to do, use any materials or equipment on the job site belonging to Subcontractor to complete the Work whether Contractor or others complete it. Any work completed by Contractor shall be based on a markup of 15% general overhead and 10% profit above all costs incurred by Contractor.

Contractor may at any time and for any reason terminate Subcontractor's services and work at Contractor's convenience. Cancellation shall be by service of written notice to Subcontractor's place of business. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the job site or in transit thereto.

Upon such termination, Subcontractor shall be entitled to payment in accordance with Section 6 only as follows: (1) the actual cost of the work completed in conformity with this Agreement plus, (2) such other costs actually incurred by Subcontractor as are permitted by the Prime Contract and approved by Owner, plus (3) fifteen (15) percent of the cost of the work referred to in item (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

15. INDEMNIFICATION. Subcontractor shall, to the fullest extent permitted by law, indemnify, defend (with counsel acceptable to Contractor), protect and hold harmless Contractor, all subsidiary or affiliated companies of Contractor, and all employees, agents, representatives, stockholders, officers and directors of any of such parties and their respective heirs, executors, administrators, successors and assigns (collectively, the "Contractor Parties") and the Owner, its members, partners, employees, agents, and its lender (collectively, the "Owner Parties") and the Architect and the project (the Contractor Parties, the Owner Parties and the Architect shall be collectively referred to herein as the "Indemnified Parties") from and against any and all claims, liabilities, losses, damages, costs, expenses, including, without limitation, judgments, executions, fines, awards, and actual attorneys' fees, court costs, awards, fines, penalties or judgments (collectively, "Liability"), resulting from or arising out of either directly or indirectly (i) the performance of the

Subcontractor's work, or (ii) the breach of the covenants or obligations of Subcontractor under this Subcontract including, but not limited to, defective work or violations of or a failure to comply with any safety order, rule or regulation, or (iii) any and all liens, stop notices and charges of every type, nature or kind which may at any time be filed or claimed against the project, or any portion thereof, the Owner, Contractor or construction lender as a consequence of acts of Subcontractor, his sub-subcontractors, materialmen or others for which they are responsible, or (iv) any equal employment opportunity, unemployment, withholding, social security, workers' or workmen's compensation or other employee benefit claims with respect to Subcontractor or his sub-subcontractor's employees arising out of the work, or (v) violation of any local, state or federal law, regulation or code by Subcontractor, or by his sub-subcontractors. The indemnification by Subcontractor of the Indemnified Parties under this Subcontract shall apply regardless of any concurrent or contributory active and/or passive negligent act or omission of any Indemnified Party; provided, however, Subcontractor shall not be obligated under this Subcontract to indemnify an Indemnified Party for Liability arising from the sole negligence or willful misconduct of the party to be indemnified, or for defects in design furnished by such persons. Such obligation shall not be construed as to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this section.

The provisions of this Section 15 shall survive the termination or expiration of the Subcontract, and shall not be limited in any way by the amount or type of insurance obtained by Subcontractor, including, without limitation, benefits payable by or for the Subcontractor, or any sub-subcontractor under any worker's compensation act, disability benefit acts, or other employee benefit acts.

Subcontractor shall ascertain all job site conditions, administrative regulations and safety orders affecting the safety of his employees and those of his sub-subcontractors and suppliers. Subcontractor shall conform to all such regulations and orders and shall take all necessary precautions to assure the safety of such employees and others on the site. Subcontractor's obligation to hold harmless, defend, protect and indemnify the Indemnified Parties shall extend to claims of such employees and persons with whom Subcontractor is in privity and their agents based on alleged failure to conform to such regulations and orders or to provide a safe place to work.

If Subcontractor by rental, loan or otherwise, makes use of any of Contractor's equipment, scaffolding, or other appliances on the job site, such use shall be at the sole risk of Subcontractor and after Subcontractor has satisfied himself as to the condition thereof. Subcontractor shall hold harmless, defend, protect and indemnify the Indemnified Parties against claims of every nature arising from the use thereof including, but not limited to, injury to Subcontractor's employees or property and the employees or property of others.

If Subcontractor, sub-subcontractor or material supplier files a mechanics' lien against the project and/or Owner's property, the Subcontractor shall cause such lien to be formally released, bonded against or satisfied within ten (10) days after written demand.

If Subcontractor fails to procure the release of any such lien or stop notice, Contractor may take all actions deemed necessary to cause such lien or stop notice to be released, and all expenses incurred by Contractor in connection therewith, including attorneys' fees and the premiums upon any bonds executed for such purpose, shall be paid by Subcontractor to Contractor upon demand. It is understood and agreed that the full and faithful performance of this Agreement on the part of Subcontractor (including the payment of any obligations due from Subcontractor to Contractor, and any amounts due to labor or materialmen furnishing labor or material of said work) is a condition precedent to Subcontractor's right to receive payment for the work performed.

16. ASSIGNMENTS AND SUB-SUBCONTRACTS.

Subcontractor shall not assign nor transfer this Agreement nor any money due or which may become due hereunder without the prior written consent of Contractor, which consent may be withheld in

Contractor's sole discretion. All sub-subcontractors and purchase orders for materials issued by Subcontractor shall refer to and incorporate the provisions of this Agreement and shall provide that the sub-subcontractor or materials supplier shall be liable directly to Contractor for any default or breach of the sub-subcontract or purchase order agreements if such default or breach is also a breach of this Agreement. Contractor may assign or transfer this Agreement, its rights hereunder, to any entity or individual which it may designate.

17. PROTECTION OF WORK. Subcontractor shall protect the Work and be responsible under all circumstances for the good condition thereof until final acceptance of the entire project by Owner. Subcontractor shall protect adjacent property from injury arising out of his work. Any damage caused by Subcontractor to work of Contractor or other subcontractors shall be forthwith repaired by Subcontractor at his sole expense. Any default by Subcontractor under this section may be remedied by Contractor, and the cost thereof shall be payable by Subcontractor on demand.

18. GUARANTEE OF WORK. Without limiting any warranties, guarantees and/or obligations of Subcontractor under the Subcontract Documents or the law, Subcontractor guarantees Owner, Contractor and his sureties against all loss and damage arising from any defect in materials or workmanship furnished by or through Subcontractor. Subcontractor's obligation to Contractor with respect to such guarantee shall be coextensive with, and for the same period of time, as Contractor is bound to Owner with respect to the Work of Subcontractor. Upon Contractor's notification Subcontractor shall forthwith, at his own expense, replace any defective material and perform any labor necessary to correct any defect in the Work. Subcontractor shall pay for work of every nature, which may be necessary in connection with the correction of defects under the guarantee. If Subcontractor should fail to make such necessary repairs and replacements promptly, Owner or Contractor may, at Subcontractor's expense, furnish such materials or labor as are necessary for this purpose, and the cost thereof shall be payable by Subcontractor upon demand, together with an amount of not less than 25% in excess of such cost for Contractor's overhead and profit.

19. ACCEPTANCE OF WORK. No payment made under this Agreement shall operate as an acceptance of any portion of the Work or as an admission on the part of Contractor that this Agreement, or any part thereof, has been complied with in case the fact shall be otherwise. Owner shall make acceptance of the Work in accordance with the provisions of the Prime Contract, unless otherwise specified in this Agreement.

20. SUBCONTRACTOR'S REPRESENTATIVE. Subcontractor shall at all times have a competent superintendent or foreman on the job site who shall be authorized to receive instructions from Contractor and to make such decisions as may be necessary for the prompt and efficient performance of this Agreement.

21. SUBCONTRACTOR'S EMPLOYEES. Subcontractor shall only employ on the Work persons skilled in the work assigned to him. Any employee of Subcontractor who is adjudged by Contractor to be incompetent, disorderly, unreliable or otherwise unsatisfactory shall immediately be removed from the Work.

22. SUBCONTRACTOR'S MATERIALS. Subcontractor shall arrange for the receipt, unloading and storage of all materials delivered to the job site, which must be furnished or used by Subcontractor in the performance of this Agreement. If Subcontractor fails to provide the necessary personnel and equipment to receive, unload and store materials delivered to the job site and Contractor, in his sole discretion, finds it necessary or desirable that Contractor's forces perform, or assist in the performance of such work, Subcontractor shall reimburse Contractor upon demand for the cost of labor and equipment supplied by Contractor for this purpose plus 15% thereof for Contractor's overhead. Materials delivered to the job site shall be received, unloaded and stored in areas, which will not interfere with the work as a whole, and it shall be the duty of Subcontractor to ascertain, before delivery, the location of such areas on the job site.

Subcontractor shall bear all risk of loss or damage to materials delivered to the job site by or on behalf of Subcontractor even though Subcontractor may have been paid therefore. If Contractor permits storage of materials in any yard or enclosure maintained by Contractor, such storage facilities are furnished to Subcontractor as a gratuitous accommodation, and Subcontractor shall remain liable for all loss or damage to such materials while in such yard or enclosure even though loss or damage may occur by reason of the negligence of Contractor in maintaining such storage facilities.

~~**23. BOND.** Subcontractor shall furnish upon request a corporate surety bond in an amount equal to the full contract price to guarantee the faithful performance of this Agreement and the payment of all obligations incurred in the performance thereof. Subcontractor shall pay the bond premium. Contractor shall have the right to demand such surety bond at any time prior to final payment under this Agreement. If Subcontractor fails to furnish such surety bond within five (5) days after demand, Contractor shall have the right to terminate this Agreement on the ground of default by Subcontractor. The corporate surety and the form of the bond shall be subject to Contractor's approval. Only those surety companies on the current revision of the list published by the United States Department of the Treasury in Circular 570 of surety companies acceptable on federal bonds shall be submitted for Contractor's approval, and the amount of the bond shall not exceed the underwriting limitation established by such list.~~

~~Contractor shall have the right to bring an action against the sureties upon any bond furnished by Subcontractor during such period as is co-extensive with the time within which Owner or any other person may bring an action against Contractor or Contractor's sureties. Any provision in a bond furnished by Subcontractor establishing a lesser period of limitations or that is inconsistent with the right of Contractor under this Agreement, whether or not Contractor requests modification thereof, shall be deemed modified so as to give Contractor the same rights with respect to the surety on such bond as Contractor has with respect to Subcontractor under this Agreement. The surety on any bond furnished by Subcontractor shall not be exonerated or released from the obligation of the bond by reason or payment to Subcontractor for work performed prior to the time payment is due under this Agreement. Failure of Contractor to serve any notice or to serve timely notice on surety shall not exonerate or release surety unless surety can establish that it was in fact materially prejudiced by such failure on the part of Contractor and, in such event, the surety shall be exonerated or released only to the extent that it can establish such prejudice.~~

~~If Subcontractor's surety fails to cure any default of Subcontractor within two (2) working days after notice is given and Contractor, in his sole discretion, determines that it is necessary to perform the Work of Subcontractor, or any portion thereof, through the use of Contractor's own forces or by others for the continued progress of the work as a whole, or to mitigate damages resulting from Subcontractor's default, Contractor may perform such work without releasing or exonerating the surety. Contractor shall be entitled to payment from the surety for such work as work completed for Subcontractor in accordance with the provisions of Section 14 of this Agreement.~~

~~If Subcontractor does not furnish a corporate surety bond to Contractor to guarantee the faithful performance of this Agreement by Subcontractor and payment of all obligations incurred by Subcontractor in performing this Agreement, said officers, and any other officer, agent or employee of Subcontractor signing this Agreement on behalf of Subcontractor do jointly and severally guarantee the faithful performance of this Agreement by Subcontractor and the payment of all obligations incurred in such performance. Failure of Contractor to request a payment and a performance bond from Subcontractor shall not affect the personal obligation assumed by the persons signing this Agreement on behalf of Subcontractor.~~

[Does Contractor want the option to require a bond from Subcontractor?]

24. ARBITRATION. Except as set forth below, any controversy or claim between the Contractor and the Subcontractor shall be settled by arbitration with Judicial Arbitration and Mediation

Services (JAMS) located in Orange County, California, which arbitration shall be conducted in the same manner and under the same procedure as provided in the Prime Contract with respect to claims between the Owner and Contractor, except that a decision by the Architect shall not be a condition precedent to arbitration. If the Prime Contract does not provide for arbitration or fails to specify the manner and procedure for arbitration, it shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, any person or entity not a party to the Agreement under which the arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law; (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration; and (3) such person or entity is not the Architect, the Architect's employee, the Architect's consultant or an employee or agent of any of them. This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

The award rendered by the arbitrator or arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

This Section shall not apply in the event Subcontractor has defaulted under the terms of this Agreement, Contractor requires Subcontractor to cooperate, concerning its options under Section 14, and Subcontractor, in Contractor's opinion, does not cooperate. In this event, Contractor shall be entitled to file an action in the Superior Court of the county in which the project is located in order to secure such cooperation.

Unless Contractor directs Subcontractor otherwise in writing, Subcontractor shall diligently carry on the performance of the work and maintain the schedule of work pending the determination of any dispute or controversy under the Subcontract Documents.

25. ATTORNEYS' FEES. If either party becomes involved in arbitration or legal action arising out of this Agreement or the performance thereof, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief granted by the arbitrator or court.

26. CLEANING UP. Subcontractor shall at all times keep the job site free from accumulations of waste material or rubbish caused by his operations. Upon completion of the Work Subcontractor shall promptly remove all rubbish, surplus materials, tools and equipment from the job site. Work of Contractor and other subcontractors soiled or marred by Subcontractor shall be cleaned and restored by Subcontractor to the condition required by the Contractor and/or the Prime Contract for acceptance of such work. If Subcontractor fails to perform cleanup work as provided herein within two (2) working days after requested, Contractor may perform such work at Subcontractor's expense as work completed for Subcontractor pursuant to Section 14 of this Agreement. If cleanup work is attributable to two or more subcontractors, Contractor may perform such work and charge the same as work completed for Subcontractor to the various subcontractors in such ratio as Contractor, in his sole discretion, shall determine to be proper, and such allocation shall be binding on Subcontractor.

27. WAIVER OF CONDITIONS. No waiver of any breach by Contractor of any provision of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provision. Contractor shall not be deemed to have waived any right in the absence of writing executed by Contractor specifically waiving such right.

28. LABOR AGREEMENTS. Contractor is a party to labor agreements, which are effective in the area within which the project is to be constructed. Subcontractor shall employ only such union

labor as is authorized by said labor agreements to perform the work covered by this subcontract and shall comply with all provisions of labor agreements binding upon Contractor or Subcontractor. Subcontractor represents that he is not in default in making payment to union fringe benefit funds.

29. NOTICES. [Is this OK or should notices be sent to respective offices?] In those instances in which written notice is required pursuant to the provisions of this Agreement or by any provision of law, such notice may be delivered to the superintendent, foreman, or other person in charge of work for either party at the job site, or may be served by mail or telegram sent to the address of the parties as set forth herein. Notices not required to be in writing may be given to the person in charge of the work at the job site or by telephone to the home office of either party.

30. COMPLIANCE WITH APPLICABLE LAWS. The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work or this Agreement. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work, the furnishing of which is required of the Contractor by the Prime Contract. The Subcontractor shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and workers' or workmen's compensation acts insofar as applicable to the performance of this Agreement.

31. SUCCESSORS IN INTEREST. This Agreement shall insure to the benefit of, and be binding upon, the heirs, executors, administrators, successors and assigns of the parties.

32. DEFINITIONS. Whenever reference is made in this agreement to the Prime Contract or contract documents, such reference shall be construed to include the Prime Contract, plans, specifications, change orders and all other documents forming a part of the Prime Contract. Wherever required by the context of this Agreement, the masculine shall include the feminine and neuter, the neuter shall include the masculine and feminine, the singular shall include the plural, and the plural shall include the singular.

33. CAPTIONS. The captions heading the various paragraphs of this Agreement are for convenience and identification only, and such captions shall not be deemed a part of this Agreement nor shall they have any effect upon the construction or interpretation of any part of this Agreement.

34. ENTIRE AGREEMENT. This Agreement contains the entire agreement between Contractor and Subcontractor pertaining to the Work to be performed hereunder, and it supersedes all prior agreements, if any, between the parties whether written or oral.

35. SAFETY PRECAUTIONS AND PROCEDURES. Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Agreement or its performance, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor, and any requirements of the Prime Contract. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes. The Subcontractor shall report to the Contractor within three (3) days any injury to an employee or agent of the Subcontractor, which occurred at the site.

Subcontractor and his sub-subcontractors shall use, handle, transport and dispose of all Hazardous Materials (as defined below) in compliance with all present and future federal, state and local environmental, health or safety laws, including, but not limited to, all such statutes, regulations, rules, ordinances, codes, and rules of common law. Subcontractor further agrees that Subcontractor and his sub-subcontractors shall not cause the discharge, release or

disposal of any Hazardous Material on the jobsite. Subcontractor and his sub-subcontractors shall, upon completion of performance of all duties under this Subcontract, remove all supplies, materials and waste containing any Hazardous Material from the jobsite. Subcontractor shall bear full financial responsibility, as between the parties of this Subcontract, for the compliance of Subcontractor and his sub-subcontractors with the provisions of this Section 35. Subcontractor agrees to indemnify, defend (with counsel acceptable to Contractor), protect and hold Contractor and the other Indemnified Parties harmless from and against any liabilities, costs, claims, damages, fines, penalties or expenses, including actual attorneys' fees and costs of investigation, soils testing, governmental approvals, remediation and clean-up arising out of or in any way connected with the failure of Subcontractor or his sub-subcontractors, their agents, employees, officers, or representatives, to comply with this Agreement. Should Subcontractor or his sub-subcontractors discharge, release or dispose of any Hazardous Material on the site in violation of this Section, Subcontractor shall immediately so inform Contractor in writing. In the event Subcontractor or his sub-subcontractors encounter on the site any pipeline, underground storage tank or other container, of any kind, that may contain a Hazardous Material, or encounter material reasonably believed to be a Hazardous Material, Subcontractor shall immediately stop work in the area affected and report the condition to Contractor in writing. If Subcontractor or his sub-subcontractors do not comply with the requirements of this Section, Contractor may, but is not obligated to, give written notice of violation to Subcontractor. Should Subcontractor or his sub-subcontractors fail to comply with the requirements of this Section within 24 hours from the time Contractor issues such written notice of non-compliance or within the time of an abatement period specified by any governmental agency, whichever period is shorter, Subcontractor shall be in material default of this Subcontract.

For purposes hereof, the term "Hazardous Material" includes, without limitation, any material or substance which is (A) defined as a 'hazardous waste' pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (B) defined as a 'hazardous substance' pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), (C) asbestos, (D) petroleum or (E) polychlorinated biphenyl (PCB), or (F) any other hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government.

36. WARRANTY. The Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents.

37. CONDITIONS TO COMMENCEMENT OF CONSTRUCTION. Before the Subcontractor commences construction of the Project, and as a condition to Contractor's obligation to proceed under the terms of this Agreement, the following approvals, deliveries and contingencies must be satisfied:

- (1) The following documents shall be approved by Owner, such approval not to be unreasonably withheld: (a) a list of each awarded sub-subcontractor and material supplier, and a list of each bidder, together with an address, phone number and contact person for each; (b) copies of Subcontractor's insurance policies which shall be issued by an insurer and in an amount equal to the full replacement costs of the Project as completed, and in a

form and substance reasonably satisfactory to Contractor and shall show Owner and Contractor as additional insured's; (c) a budget for all anticipated expenditures required to be made in order to complete construction of the Project; (d) a schedule for construction which shall indicate commencement and completion dates for the Work and provide for final completion of the Project no later than five (5) calendar days after the Notice of Commencement is issued. Notwithstanding the foregoing, the schedule of construction provided by the Subcontractor shall be extended by the same number of days as construction is delayed by the occurrence of any of the following, as determined in Contractor's sole discretion: (i) uncharacteristically adverse weather conditions, strikes, lockout, inability to procure materials (for reasons other than the financial condition of the Contractor; and (ii) the act or failure to act of Owner.

Before commencing the Work, Subcontractor shall deliver to Owner, Lender and/or Title Company such other documents and information as any of them reasonably may require.

Subcontractor shall deliver all of the items described above to Contractor **within five (5) days of executing this contract.** Contractor shall have five (5) business days after receipt of the last of such items in which to approve or reject any of them. Contractor's failure to notify Subcontractor of its rejection of any of such items within such five-business-day period shall constitute Contractor's approval of all of such items. If Contractor rejects any of such items within the five business days after receipt of the last of such items, then Contractor shall have the right, exercisable by Contractor in its sole discretion, to terminate this Agreement, in which event this Agreement shall be void and of no further force and effect.

37. FINAL WALK-THRU--DEFECTIVE ITEMS. Upon completion of the Work, Subcontractor shall provide to Contractor:

- (1) Final inspection cards from final inspections by all of the appropriate governmental entities;
- (2) An Architect's or Contractor's certification that the Work has been built in substantial conformance with the Plans and Specifications therefore;
- (3) A bill-of-sale and assignment of warranties covering any and all personal property contained in or about the Work;
- (4) An assignment of warranties and all Subcontractor's rights against any and all contractors, subcontractors, material men and suppliers involved in the construction of the Work in a form reasonably acceptable to Contractor; and
- (5) Such other items as Contractor may reasonably require.

Subcontractor shall also take such other action as may be required by the title company to ensure deletion of the mechanic's lien exception.

After notification by Subcontractor that the Work is substantially completed, Contractor and Subcontractor or their authorized representatives shall conduct a joint walk-through inspection of the substantially completed Work. Within three (3) business days after the completion of the joint walk-through inspection Contractor shall prepare and submit to Subcontractor a written punch list ("Punch List") of all items which Contractor contends are incomplete, defective or do not comply with the final plans and specifications.

If Subcontractor does not agree with one or more of the items on the Punch List, Subcontractor shall within three (3) business days after receipt of the Punch List furnish to Contractor a written statement indicating which items on the Punch List Subcontractor disputes and setting forth his reasons for disputing them. As to any items disputed, the parties shall promptly meet and attempt to resolve such dispute. As to the items not in dispute, Subcontractor shall, at his sole cost and expense, undertake to expeditiously and

diligently correct or complete any items on the Punch List that are not disputed, and shall deliver a letter to Contractor to that effect. If Contractor contends that incomplete, defective or non-complying items set forth in the Punch List have not been corrected or completed, and Subcontractor does not deliver a letter to Contractor agreeing to correct or complete such items, Contractor may withhold from amounts payable to Subcontractor the amount which Contractor estimates is the cost to repair or complete such incomplete, defective or non-complying items. If the parties cannot agree upon Subcontractor's obligation as to those items that are in dispute, the total amount in dispute, or whether Subcontractor has timely and satisfactorily corrected those items, which it agreed to correct, the matter shall be promptly submitted to binding arbitration in accordance with this Agreement.

38. REPRESENTATIONS, WARRANTIES AND COVENANTS. As of the effective date of this Agreement and as of the Project completion date, Subcontractor represents and warrants to Contractor and covenants with Contractor, and acknowledges that Contractor is relying upon such representations, warranties and covenants in constructing the Project, that:

- (1) To the best of Subcontractor's knowledge but without independent verification, there is no violation of any applicable federal, state and local environmental and other governmental laws and regulations concerning the Project or construction thereon.
- (2) As of the date the Project is completed, all utilities are in place and serving all units in the Project.
- (3) There is no default under any agreement, contract, lease or other commitment, nor is there any claim, demand, litigation, proceedings or governmental investigation pending or threatened against Subcontractor or related to the business or assets of Subcontractor, which would materially and adversely affect Subcontractor or its ability to construct the Project.
- (4) Subcontractor, and each of the parties executing this Agreement on behalf of Subcontractor, has the authority to execute this Agreement and perform the obligations of Subcontractor created by this Agreement without the consent or approval of any other person.
- (5) Subcontractor shall not do, commit, and allow to be done or fail to do anything that would have a material adverse effect on the Project.
- (6) All of the information and documents delivered by Subcontractor to Contractor pursuant to this Agreement are, to Subcontractor's knowledge, true and correct and do not omit to state a material fact.
- (7) Subcontractor will substantially complete all work shown on the Plans and Specifications in a good and workmanlike manner and in conformity with all applicable governmental requirements; and if there are any minor variations based on prudent building practices, all such variations are equal to or better than the work shown on such Plans and Specifications. Subcontractor further represents and warrants to Contractor and Owner that all work performed and material and equipment used in the construction of the Project have been or will be of good quality, free from material faults and defects and substantially in conformance with the Plans and Specifications. Where faults and defects are discovered, or where work is not in conformance with the Plans and Specifications, whether or not material or substantial, Subcontractor shall nevertheless remedy the same. Subcontractor hereby warrants such work to be free from defects in material and workmanship for a period of one (1) year after the delivery of the items required above, and shall assign

all manufacturers' warranties to Contractor. Such warranty shall be in addition to and not in limitation of any other warranty, guaranty or remedy required by law or the Subcontract Documents.

- (8) Each and every representation and warranty made by Subcontractor is true and correct and does not omit to state a material fact as of the date made and as of the Project completion date, and each representation and warranty shall survive the Project completion date and the performance of the parties' obligations under this Agreement.

40. DEFECTIVE WORK. If any Work is found to be defective within one (1) year of the date that the Architect has certified that the project is completed and that there are no further requirements to be met in order to occupy the same, Subcontractor shall correct it promptly after receipt of a written notice from Contractor to do so. If Subcontractor does not repair or replace such defective Work within a reasonable time after Subcontractor's receipt of such notice, Contractor may, but shall not be obligated to, repair or replace such defective Work. If Contractor does repair or replace such defective Work, Subcontractor shall be liable for all costs incurred thereby, together with an amount of no less than 25% in excess of such costs for Contractor's overhead and profit.

41. CONSTRUCTION LOAN REQUIREMENTS. The Subcontractor agrees to sign such additional documents and take such further actions as the Owner's construction lender may require as a condition to funding the loan; provided, however, that no such change may reduce the Subcontractor's Fee or other amounts to be paid to Subcontractor without Subcontractor's prior written consent.

42. PROVISIONS FOR INSPECTION. Subcontractor shall at all times furnish to Contractor and its representatives safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and its sub-subcontractors and materialmen where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation.

43. MATERIALS AND WORK FURNISHED BY OTHERS. In the event the scope of work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the work. Use of such items or commencement of work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Agreement.

44. INDEPENDENT CONTRACTOR. Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the contract amount, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the work; obtain all necessary permits and licenses therefor, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

45. GENERAL PROVISIONS. If there is any discrepancy, inconsistency or ambiguity in the quality or quantity of work or materials required under the contract documents:

(1) The Subcontractor shall immediately bring such discrepancy, inconsistency or ambiguity to the attention of the Architect and Contractor.

(2) The Subcontractor shall provide the better quality or greater quantity of work or materials without an increase in the Contract amount, unless otherwise ordered in writing by the Architect or Contractor. Computed dimensions shall take precedence over scale dimensions and large-scale drawings shall take precedence over small-scale drawings to the extent that the Contract Documents do not set forth the basis and analysis of design, and the Subcontractor shall obtain such information as may be necessary to satisfactorily perform and complete the Work.

If any term or provision of this Subcontract shall be held to any extent to be invalid or unenforceable, the remaining terms and conditions of this Subcontract shall be valid and shall be enforceable to the fullest extent permitted by law.

Notwithstanding the fact that this Subcontract is executed as of the date first set forth above, the parties recognize that a portion of the Subcontractor's work may have been performed prior to such date, all of which Subcontractor's work shall be governed by the terms and conditions of this Subcontract and shall be deemed to be a part of the work. Subcontractor shall not be entitled to any compensation for such prior activities and services except as expressly provided herein. Without limiting the foregoing, all of Subcontractor's liabilities and obligations to Contractor hereunder shall apply to all work and services provided by Subcontractor for the project prior hereto, notwithstanding the fact that such work or services may have been performed prior to the date hereof pursuant to prior negotiations, representations, agreements, understanding or otherwise.

All Exhibits or Addenda attached hereto are incorporated herein by this reference and made a part hereof.

Unless otherwise provided in the Prime Contract, this Subcontract shall be governed by the laws of the state in which the project is located.

The signatures below represent acceptance of the above TERMS AND CONDITIONS contained in this Agreement.

Contractor

GLJ Builders West, LP

By: _____
Tony Ditteaux

Its: Vice President

By: _____
Garth Erdossy

Its: President

Subcontractor

By: _____

Its: _____

By: _____

Its: _____