



SUBCONTRACT AGREEMENT

SUBCONTRACT NO. 000000

IN THE EVENT SUBCONTRACTOR UNDERTAKES ANY WORK DESCRIBED HEREIN AFTER RECEIPT OF THIS AGREEMENT, THEN SUBCONTRACTOR BY SUCH ACTION SHALL BE DEEMED TO HAVE ACCEPTED ALL THE TERMS HEREIN WITHOUT EXCEPTION REGARDLESS WHETHER THIS SUBCONTRACT AGREEMENT IS EXECUTED OR NOT.

THIS AGREEMENT made and entered into between CHRIS-TEL CONSTRUCTION, a Florida Corporation, 2534-A Edison Avenue, Fort Myers, Florida 33901, (herein called "CONTRACTOR") and {ToCompany.Name}, {Addresses.Address1}, {Addresses.City}, {Addresses.State} {Addresses.zip}, (herein called "SUBCONTRACTOR").

PROJECT: {Projects.Name} {Projects.Address} LOCATION ADDRESS: {Projects.Address}
OWNER: {LegalDocInfo.Owner} ARCHITECT / ENGINEER: {Architect/Engineer}
SUBCONTRACT AMOUNT: {Contracts.OrigValue} SUBCONTRACT DATE: {Contracts.ContractDate}
CONTRACTOR'S PROJECT NUMBER: {Projects.Number} CONTRACTOR'S COST CODE NUMBER: {Contracts.CSICode}
CONTACT NAME: {ToContact.Display} CONTACT {ToContact.Tel} CONTACT {ToContact.Fax}

For the consideration expressed herein, CONTRACTOR and SUBCONTRACTOR do hereby covenant and agree as follows:

1. Subject to the terms and conditions contained herein, SUBCONTRACTOR agrees to provide everything required to complete and will complete in strict compliance with the Contract Documents and to the highest standards for such Workmanship in the industry, the following described items (herein referred to as the "Work") in connection with the construction of the Project.

Work Division(s): CONTINUED ON ATTACHED EXHIBIT "A". MOREOVER, INCLUDED BUT NOT LIMITED TO THE SUBCONTRACTORS' OBLIGATIONS ARE THOSE ITEMS, TERMS, COVENANTS AND CONDITIONS AS MORE PARTICULARLY SET FORTH IN THE ATTACHED EXHIBITS A,B,C,D,E,F,G,H,I WHICH EXHIBITS ARE INCORPORATED HEREIN.

In addition, as part of SUBCONTRACTOR'S Work, SUBCONTRACTOR shall furnish all labor, materials, scaffolding, equipment, machinery, tools, temporary utilities, apparatus, transportation, hoisting, insurance, bonds, staff, administration and all other items to perform and complete the Work, including also all shop drawings and samples, and shall perform all other portions of the Work either shown, connected, inferred or interrelated to such Work above described. The intent of Exhibit "A" is to provide the SUBCONTRACTOR with the practical information regarding the SUBCONTRACTOR'S scope of Work; however, inasmuch as it is neither practical nor standard to express every detail, item or requirement within the SUBCONTRACTOR'S scope of Work, it is expressly agreed that SUBCONTRACTOR is experienced and knowledgeable about such work and shall be responsible for including all items, materials, equipment and everything necessary to complete such Work functional for its intended use and purpose regardless of whether or not all such items, materials, equipment or requirements are expressed or detailed in Exhibit "A", the Contract Documents, the Plans or the Specifications. SUBCONTRACTOR has thoroughly examined the Contract Documents, and hereby represents and warrants that SUBCONTRACTOR shall provide all the necessary Work required to provide a complete installation, functional for its intended use and

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purpose, and in strict compliance with the Contract Documents, and all applicable jurisdictional building codes or specialty codes, whether State, Local or otherwise. Should the scope of Work specified under this Agreement relate to the construction of a condominium, Florida Statute 718.203 shall apply and be in full force.

2. SUBCONTRACTOR is to secure, pay for and file with the CONTRACTOR, prior to commencing any Work hereunder, all Certificates for Workers' compensation, public liability and property damage liability insurance, completed operations and such other insurance coverages as may be required by the CONTRACTOR or the Contract Documents, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated below. In the event the SUBCONTRACT Amount set forth in this Agreement is for an amount in excess of one-million dollars, then in that event, SUBCONTRACTOR shall secure, pay for and file with the CONTRACTOR an Excess/Umbrella Liability Policy in at least the Amount of the SUBCONTRACT Amount. The SUBCONTRACTOR shall provide the minimum limits of liability insurance coverage as follows:

Auto Liability	\$1,000,000	Combined Single Limit	General Liability continued
	\$1,000,000	Hired & Non Owned Auto	\$2,000,000
General Liability	\$1,000,000	Each Occurrence	Products – Completed Operations Aggregate
	\$1,000,000	Personal and Advertising Injury	\$10,000
	\$2,000,000	General Aggregate	Medical Payments
			Equal to Subcontract Amount
			Umbrella

Each policy shall be endorsed specifically naming CONTRACTOR and its officers, agents, servants, and employees as Additional Insured on their General Liability policy, Completed Operations, and Excess/Umbrella Liability Policy with respect to the Work performed for the referenced Project. Each policy shall be endorsed to provide that the underwriter waives its right of subrogation against CONTRACTOR. Such insurance afforded to CONTRACTOR as Additional Insured under the SUBCONTRACTORS policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by CONTRACTOR. Accordingly, all of the aforesaid policies shall be further endorsed to provide that they are primary coverages and not in excess of any other insurance available to Contractor without rights of contribution from any such other insurance available to CONTRACTOR.

SUBCONTRACTOR shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, CONTRACTOR named as an additional insured on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of CONTRACTOR on all policies. SUBCONTRACTOR will maintain the General Liability and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the additional insured endorsement until at least 4 years beyond completion and delivery of the work contracted herein. Such certificate shall provide the policy number, effective and expiration dates and the limits of liability coverage. Under no circumstances shall the Deductible applicable to any insurance product, coverage or policy required in this Subcontract be higher than \$5,000.00. If the required property insurance is not in effect for the full value of the SUBCONTRACTOR(S) work, then the SUBCONTRACTOR shall purchase insurance for the value of the SUBCONTRACTOR(S) work.

Certificates of Insurance submitted to the CONTRACTOR will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.

SUBCONTRACTOR shall secure from all its SUBCONTRACTOR(S) the same insurance coverages and policies in the same amounts as SUBCONTRACTOR is required to provide to the CONTRACTOR herein. In addition, the SUBCONTRACTOR'S Workers Compensation, Employers Liability Policy, General Liability Policies, completed Operation Policies, and Umbrella Policy shall contain Waivers of Subrogation in favor of CONTRACTOR, OWNER and any other entity as may be required by the Contract Documents. All such insurance coverages or policies shall be issued by carriers which shall maintain at least a minimum A.M. BEST RATING of A-, FSC VI. Failure to maintain insurance products, policies, endorsements or coverages as set forth herein, or failure of the carrier to maintain the minimum A.M. BEST RATING of A-, FSC VI shall be deemed a material breach and default of this SUBCONTRACT by the SUBCONTRACTOR. SUBCONTRACTOR shall maintain all insurance coverages required by this Agreement in force for a period of

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four years after completion of the Project, or expiration of any warranties, or expiration of any applicable statute of limitations relating to such Work, whichever is greater.

Should any of the above described policies be cancelled, terminated, or rescinded before the expiration period above referenced, then in that event, the issuing insurer, the SUBCONTRACTOR and the Agent involved in procuring such insurance shall each provide advance written notice to the CONTRACTOR and shall ensure that CONTRACTOR was served with such written notice at least thirty (30) days prior to such cancellation, termination or rescission.

Notwithstanding any other provision of the SUBCONTRACT AGREEMENT, the SUBCONTRACTOR shall maintain complete Workers' compensation coverage for each and every employee, principal, officer, representative, borrowed employee, leased employee, or agent who is performing any labor, services or material under this SUBCONTRACT AGREEMENT. Specifically, the Workers' compensation coverage shall include, but not be limited, to provide, coverage consistent with Chapter 440, Florida Statutes, as revised or amended by law. Further, SUBCONTRACTOR shall additionally maintain the following minimum limits of coverage for Employer's Liability:

Bodily Injury Each Accident	\$1,000,000
Bodily Injury by Disease Each Employee	\$1,000,000
Bodily Injury by Disease Policy Limit	\$1,000,000

SUBCONTRACTOR shall provide the CONTRACTOR with a certificate of insurance verifying compliance with the Workers' compensation coverage as set forth herein and shall provide as often as required by the CONTRACTOR such certification and shall include the insurance policy, policy number, effective and expiration dates and the limits of Workers' compensation coverage under each policy. In addition to the requirements, obligations or provisions set forth herein, in the event the SUBCONTRACTOR or a sub-subcontractor or lower tier subcontractor(s) utilizes any borrowed employee or employee leasing company, then the following additional certificate shall be secured and filed with CONTRACTOR: A Certificate of Insurance which shall be in full compliance with all provisions, requirements, limits, and terms set forth herein; and In addition the CONTRACTOR and the SUBCONTRACTOR shall be also named as Additional Insured. Any subcontractor, sub-subcontractor or lower tier subcontractor(s) utilizing borrowed or leased employees shall provide and deliver upon request a master list of employees and payrolls for the duration or the above referenced project.

SPECIAL REQUIREMENTS: Insurances are to be as specified within the Project Specifications, Supplemental Conditions, Contract Documents, or as listed above, which ever provides the broader and more complete coverage.

Should SUBCONTRACTOR fail to comply with any term, condition or provision of the above-referenced insurance requirements set forth in this Section 2 and its subparts prior to commencing Work or thereafter, then CONTRACTOR shall not have been deemed to have waived, altered or changed any of the insurance requirements herein.

3. SUBCONTRACTOR shall provide and deliver to CONTRACTOR naming CONTRACTOR as Obligee, both a Performance Bond and a Labor and Material Payment Bond. Upon request by the Contractor, a Dual Obligee Rider shall be issued in connection with such bonds, such Bond(s) costs are included in the Subcontract Amount, and shall be at no additional cost or expense to CONTRACTOR, and each bond shall be in an amount equal to the total Subcontract Amount. The SUBCONTRACTOR Performance Bond shall be on a form identical to Exhibit "E" attached, and the Subcontract Labor and Material Payment Bond shall be on a form identical to Exhibit "F" attached hereto, and incorporated herein. Such bonds shall undertake to insure and guarantee CONTRACTOR the full and faithful performance of all obligations and undertakings contained herein. Such Bond(s) shall be issued by Surety which shall maintain at least a minimum A.M. BEST RATING of A-, FSC VI. Failure to issue Bond(s) as set forth herein, or failure of the Surety to maintain the minimum A.M. BEST RATING of A-IV shall be deemed a material breach and default of this SUBCONTRACT AGREEMENT. The original of said bond(s) shall be delivered to the CONTRACTOR within ten (10) days after the full execution hereof, but in any event, prior to commencement of any Work hereunder by SUBCONTRACTOR. CONTRACTOR reserves the right to permit SUBCONTRACTOR to begin and continue Work without waiving, altering or changing the requirement and obligation of SUBCONTRACTOR to provide said bond(s) to CONTRACTOR.

4. SUBCONTRACTOR shall submit to CONTRACTOR all Close-Out Documents in a form required by the Contract Documents

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including, but not limited to, all warranties, guarantees, maintenance and operating manuals and up to date "As-Builts", prior to completion of 50% of its Work. Further, "As-Builts" shall be updated and submitted monthly with each payment application. SUBCONTRACTOR'S failure to comply shall be deemed a material breach of the SUBCONTRACT AGREEMENT. CONTRACTOR'S failure to enforce this provision does not in any manner constitute a waiver, release or discharge of SUBCONTRACTOR'S timely compliance. In addition to any other remedy available to CONTRACTOR, CONTRACTOR shall have the right to engage any and all necessary persons to prepare such Close-Out Documents and shall be entitled to deduct the costs thereof, including overhead and profit, and any other damages, as hereinafter described from any amounts due SUBCONTRACTOR.

5. SUBCONTRACTOR, as part of its Work, and to maintain a safe Project Site, shall at all times keep the site of the Work, storage area and all the public and private areas clean and free from accumulations of waste material or rubbish caused by construction. SUBCONTRACTOR shall be required to make daily broom swept cleanup and remove all trash or other debris deposited within the scope of its Work. During the progress of the Work, SUBCONTRACTOR shall store materials and equipment in an orderly manner and shall keep the premises, including the storage area and the Work site, at all times clean and free from obstructions and debris. Upon completion of the Work, SUBCONTRACTOR shall remove all temporary buildings and facilities erected by or through SUBCONTRACTOR, all construction equipment, surplus materials and supplies belonging to SUBCONTRACTOR, and shall leave the premises and the Work in good order, clean and ready for its intended use. In the event SUBCONTRACTOR fails to comply with this section, then in addition to every other remedy at law or in equity, SUBCONTRACTOR further agrees that the SUBCONTRACTOR is responsible for labor forces, supplementation, or other expenses and costs incurred by CONTRACTOR to correct the condition.

6. All construction personnel shall conform to OSHA and all applicable industry safety standards imposed by the CONTRACTOR including the wearing of hard hats when requested. Failure to comply with CONTRACTOR'S directives regarding safety shall be cause for the CONTRACTOR, at its sole discretion, to cause SUBCONTRACTOR'S forces to vacate the Project site until compliance is accomplished. In the event such action becomes necessary, any delays or damages as a result shall become the responsibility of the SUBCONTRACTOR under the terms and conditions of this Agreement. Further, SUBCONTRACTOR shall submit to CONTRACTOR within ten (10) days of executing this Agreement "Material Safety Data Sheets" for all materials and chemicals to be utilized in the performance of this Agreement. Further, SUBCONTRACTOR agrees to strictly comply with all Federal OSHA Hazardous Communication Standards, including, but not limited to: (a) Label all containers of hazardous chemicals with appropriate hazard warnings; (b) Provide adequate education and training regarding the regulations and how to Work safely with hazardous chemicals.

7. The following definitions shall apply to and control all interpretation of this Agreement:

A. OWNER shall mean the person, firm, corporation, municipality, county or department or agency of the State or Federal Government, which enters into a Direct Contract with the CONTRACTOR for the performance of the Work and shall include any assignee or successor OWNER.

B. PLANS AND SPECIFICATIONS shall mean all plans, specifications, addenda, drawings, general conditions, special conditions, supplemental or other conditions and instructions of the ARCHITECT, ENGINEER, CONTRACTOR or OWNER; and also shall include any progress charts, CONTRACTOR'S Original Project Schedule and amendments thereto, as are maintained in the office(s) of the CONTRACTOR, or OWNER. Further, SUBCONTRACTOR shall conform to and abide by any additional specifications, drawings, clarifications or explanations furnished by ARCHITECT or ENGINEER to illustrate Work to be performed.

C. SUBCONTRACTOR shall mean the above named SUBCONTRACTOR, its agents, successors and assigns and its surety under any bond(s) provided pursuant to Article Three (3) above.

D. ARCHITECT and/or ENGINEER shall mean the ARCHITECT and/or ENGINEER of Record, or other Representative of the OWNER under whose supervision, direction or inspection the Work is required to be subject to in terms of this Agreement, the Contract Documents, and/or the Direct Contract between OWNER and CONTRACTOR.

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E. WORK SITE or JOB SITE or PROJECT SITE shall include any and all improvement areas, buildings and structures of the Project, including, but not limited to, outside utilities, sidewalk, landscaping, roads, streets and other items which are the subject or objects of construction provided for in the Direct Contract between OWNER and CONTRACTOR.

F. INTEREST. The parties agree that no interest shall be paid to either party for breach of payment under this Agreement, or the interest rate is agreed to be zero percent (0%). The only interest either party may claim is post-judgment interest.

G. DIRECT CONTRACT shall mean all written, typed or printed agreements between OWNER, ARCHITECT or ENGINEER, or their agents, and CONTRACTOR, including, but not limited to, Plans and Specifications as herein defined.

H. THE CONTRACT DOCUMENTS consist of this SUBCONTRACT AGREEMENT, the Direct Contract(s) between the OWNER and CONTRACTOR, all conditions of the Direct Contract and Subcontract for the Project, (whether general, supplementary, special or other conditions), drawings, plans and specifications, addenda issued prior to execution of the Direct Contract, and any other document identified or referenced in this SUBCONTRACT AGREEMENT.

8. SUBCONTRACTOR shall submit to the CONTRACTOR all shop drawings, submittal data, brochures and samples which fully comply with the requirements of the Contract Documents, the Plans and Specifications, and the SUBCONTRACTOR'S Work no later than ten (10) days after SUBCONTRACTOR'S execution or acceptance of this Agreement, and further, shall furnish to the CONTRACTOR such submittals in as many duplicated copies, sepias, CDs or other media as CONTRACTOR may require. All such material shall be timely submitted at one time, and shall not be submitted in parts. Failure to timely and properly issue all such submittals and shop drawings shall be deemed a material breach of this SUBCONTRACT AGREEMENT. Review, acceptance or the processing of shop drawings shall not relieve SUBCONTRACTOR of its obligations to comply with the Contract Documents. CONTRACTOR'S failure to enforce this provision shall in no way waive, release or discharge the SUBCONTRACTOR of its obligations herein.

9. SUBCONTRACTOR shall inspect the Work Site or Job Site and all surfaces as well as all conditions, areas or structure(s) related to its Work, and all Work performed by others which relates to SUBCONTRACTOR'S Work, prior to performance of its scope of Work, and SUBCONTRACTOR shall notify CONTRACTOR in writing immediately of any deficiencies or problems that would adversely affect SUBCONTRACTOR'S Work, the quality and timeliness of its Work, the finished product, and/or in any way adversely affect the Project site. By commencing Work, SUBCONTRACTOR accepts full responsibility for all surfaces, areas and structure(s) which interface with its Work, and further represents that it has thoroughly examined the Contract Documents, the Project site, the CONTRACTOR'S Original Project Schedule, or amendments thereto, and all conditions, and has determined that he accepts all conditions and matters effecting the proper and timely execution of the Work. Failure to timely provide written notice to CONTRACTOR of such deficiencies or problems before commencing Work shall be deemed a complete waiver and/or release of such claims by the SUBCONTRACTOR.

10. SUBCONTRACTOR agrees to immediately prepare for performance of Work and shall carry on its Work promptly and efficiently and at a speed that will not cause any delay in the CONTRACTOR'S Original Project Schedule, the progress of the CONTRACTOR'S Work or other phases of Work being carried on by others. SUBCONTRACTOR shall fully perform its Work within the duration of time required by the CONTRACTOR'S Original Project schedule. If, in the sole opinion of the CONTRACTOR, the SUBCONTRACTOR falls behind in the progress of its Work, the CONTRACTOR may direct the SUBCONTRACTOR to take such steps as the CONTRACTOR deems necessary to improve the rate of progress, including requiring SUBCONTRACTOR to increase the number of shifts, overtime operations, days of Work, amount of Workmen and/or amount of equipment, and/or require SUBCONTRACTOR to submit for approval a schedule demonstrating the manner in which the required rate of progress may be regained, all without any additional costs or expense whatsoever to CONTRACTOR. Failure of SUBCONTRACTOR to immediately comply with CONTRACTOR'S scheduling requests provided herein shall be considered to be an event of material breach hereunder for which CONTRACTOR may assert any and all remedies as provided herein. Should SUBCONTRACTOR in any way cause any delay, disruption, loss of efficiency, loss of productivity, and/or interruption to the CONTRACTOR, any other SUBCONTRACTOR on the Project, or to any portion of the Work described in the Direct Contract, then SUBCONTRACTOR shall be liable to CONTRACTOR for any and all damages as defined herein or as otherwise suffered by CONTRACTOR as a result thereof. The SUBCONTRACTOR acknowledges and agrees that the CONTRACTOR'S Original Project Schedule, and the CONTRACTOR'S competitive interests for this Project, include a Project Schedule more aggressive than the Owner's

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completion dates for the Project, and that any failure to timely complete the Project pursuant to the CONTRACTOR'S Original Project Schedule will cause damages to the CONTRACTOR regardless of whether or not the Owner suffers or asserts any damages. In addition to CONTRACTOR damages, in the event OWNER shall assess any delay, disruption, interruption, acceleration or liquidated damage against CONTRACTOR, either pursuant to a liquidated damage provision in the Direct Contract or otherwise, then SUBCONTRACTOR shall also be liable to the CONTRACTOR for all such additional damages. CONTRACTOR shall further have the right and option at its discretion to deduct any and all such assessments or damages that, in the judgment of the CONTRACTOR, are attributable to any such delays, disruption, interruption or acceleration caused by the SUBCONTRACTOR from any amounts that are unpaid to SUBCONTRACTOR under this Agreement. Permitting SUBCONTRACTOR to continue, after the time to complete the Work has expired, shall not be construed as a waiver, release or discharge of damages for the non-performance or breach of the time requirements provided herein.

11. SUBCONTRACTOR shall maintain a competent and experienced superintendent or foreman on the Project at all times with authority to carry out directives of the CONTRACTOR relating to the SUBCONTRACTOR'S Work and responsibility. The CONTRACTOR may hold a weekly Project Meeting on the Job site, for the purpose of overall Project coordination including distribution and discussion of Project Schedule, resolution of problems and clarification of documents. SUBCONTRACTOR shall have in attendance a representative authorized to make decisions on behalf of the SUBCONTRACTOR. Attendance at Project Meeting is mandatory. Failure to attend, shall not relieve the SUBCONTRACTOR of responsibility for compliance with decisions and/or clarifications arising from such meetings. Failure of the SUBCONTRACTOR to comply with this Article shall be deemed a material breach of this SUBCONTRACT AGREEMENT.

12. The CONTRACTOR shall pay SUBCONTRACTOR for Work performed on a monthly basis subject to the following conditions precedent: Payment requests must be submitted with all required backup utilizing the SUBCONTRACTOR Application for Payment Forms attached hereto as Exhibit "H" and incorporated herein by reference. Such SUBCONTRACTOR Application for Payment must be received in CONTRACTOR'S office on the 20th of each month to be paid by the 10th day of the following month provided SUBCONTRACTOR is in full compliance with all terms and conditions of the SUBCONTRACT AGREEMENT. The SUBCONTRACTOR'S Application for Payment shall be accompanied by valid fully executed lien and bond waivers utilizing only the CONTRACTOR'S Form Release (attached hereto as Exhibit "B") covering the amounts of monies reflected in such pay request; and further, payment shall not be made unless and until and as an additional condition precedent, all such lien and bond waivers and/or releases are delivered to the CONTRACTOR (utilizing the Release Form attached hereto as Exhibit "B") by the SUBCONTRACTOR, and all performing labor, equipment, services or materials for the SUBCONTRACTOR or under the SUBCONTRACTOR'S scope of Work. SUBCONTRACTOR'S representative executing this Agreement personally agrees to be a fiduciary over all payments issued to SUBCONTRACTOR, and owes the CONTRACTOR an obligation only to use the Construction Payments to pay for the actual labor, services and materials furnished to this Project by SUBCONTRACTOR. SUBCONTRACTOR shall not use Construction Payments for any other purpose unless and until all Work is completed and all those performing labor, services and materials under SUBCONTRACTOR'S scope have been paid in full. Such progress construction payments shall be in an amount not in excess of 90% of Work completed. The basis for payment shall be for Work actually completed less retainage in an amount not less than 10% of said requested payment, and is conditioned upon said Work complying with the Plans and Specifications and is subject to the approval of the OWNER, ARCHITECT and CONTRACTOR. The unpaid balance to the SUBCONTRACTOR shall at all times be sufficient to complete the Work required under this SUBCONTRACT AGREEMENT and to satisfy further any and all unpaid claims, liens, delays, corrections or remedies caused by SUBCONTRACTOR. The estimated amount for such claims, liens, delays, remedies or to complete such Work shall be made solely by the CONTRACTOR, and SUBCONTRACTOR shall not, under any circumstances, remove any materials stored on the Job site for which payment is requested. SUBCONTRACTOR agrees to provide CONTRACTOR with a list of suppliers, laborers, materialmen, subcontractors, and others performing Work under its Subcontract. Notwithstanding anything herein to the contrary, CONTRACTOR shall have no obligation to pay SUBCONTRACTOR unless and until, and as a strict condition precedent, the OWNER has first paid the CONTRACTOR for the SUBCONTRACTOR'S work. Further, progress construction payments to SUBCONTRACTOR shall be made only with funds received from the OWNER for Work performed by the SUBCONTRACTOR as reflected in the CONTRACTOR'S application for payment. Approval of the CONTRACTOR'S application for payment and the actual payment of the Work reflected therein by the OWNER, shall be a condition precedent which must occur before the CONTRACTOR will be obligated to pay the SUBCONTRACTOR for Work performed. The provisions of Florida Statute 287.0585 and Florida Statute 713.20 and subparts thereto do not apply to this Agreement and said provisions are expressly waived. The CONTRACTOR has at all times the right to either make direct payment or joint check payment, at CONTRACTOR'S sole discretion, to any of the

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SUBCONTRACTOR'S subcontractors, materialmen, laborers, suppliers or sub-subcontractors and to deduct such amounts from SUBCONTRACTOR'S balance.

13. Notwithstanding any other provision to this Subcontract, CONTRACTOR shall not be liable for any extra Work unless and until and as a condition precedent a fully executed Change Order is signed by the parties. Should SUBCONTRACTOR perform any Work without such an executed Change Order signed by the Officer or Project Manager for the CONTRACTOR, then such conduct by the SUBCONTRACTOR shall be deemed to mean such Work will not alter or change the Subcontract Amount. The SUBCONTRACTOR expressly agrees that the CONTRACTOR'S Superintendent shall have no authority nor be able to alter, amend or modify the SUBCONTRACT AGREEMENT, nor is the Superintendent for the CONTRACTOR authorized to approve any extras, additional work, or Change Orders. Further, the SUBCONTRACTOR agrees and acknowledges that no extra, Change Order, nor claims are valid or enforceable unless and until issued in writing and signed by an Officer of the CONTRACTOR or the CONTRACTOR'S Project Manager for the Project.

14. Final payment, inclusive of all retainage, will be made to SUBCONTRACTOR thirty (30) days after the following absolute conditions precedent to final payment have occurred: (1) Issuance of certificate from the ARCHITECT or ENGINEER that the entire Project has been fully completed and accepted to its satisfaction; (2) The CONTRACTOR has received final payment for the entire Project from the OWNER; (3) All Final and Complete lien and bond waiver and/or Releases for the Project (on the forms attached hereto as Exhibit "I") have been delivered to the CONTRACTOR by the SUBCONTRACTOR and all performing any labor services or materials under the SUBCONTRACTOR'S scope of Work; (4) All conditions and terms of Section 12 of this Agreement for partial payment have been fully satisfied and performed by the SUBCONTRACTOR; (5) All Close-Out Documents warranties and As-Built drawings have been delivered by the SUBCONTRACTOR and accepted by the OWNER, ARCHITECT and CONTRACTOR; and (6) The SUBCONTRACTOR is not in breach or violation of any provision of this Agreement. If, at any time, there shall be evidence of any lien, encumbrance, bond claim, dispute, delay, or claim of any nature whatsoever for which the SUBCONTRACTOR may be chargeable, then CONTRACTOR shall have the right to retain out of any payment due or to become due an amount sufficient to satisfy same. The CONTRACTOR shall also have the right to retain sufficient funds to indemnify CONTRACTOR for all damages, expenses, losses and claims, including but not limited to, interest, attorney's fees, court costs, and appellate attorney's fees. Should any claim, encumbrance, bond claim, dispute, delay, or lien develop after all payments are made, SUBCONTRACTOR shall immediately refund the CONTRACTOR all monies that CONTRACTOR may be at risk to incur or pay in discharging of same, including but not limited to, interest, attorney's fees, and costs, court costs, and appellate attorney's fees incurred or to be incurred by the CONTRACTOR in satisfying or addressing such claims.

15. In addition to any other provision, the parties herein agree that the CONTRACTOR has the right to withhold payment to the SUBCONTRACTOR in the event that a bona fide dispute exists regarding the amount due SUBCONTRACTOR, irrespective of whether the CONTRACTOR has received payment from the OWNER with regard to the services, labor and materials furnished by said SUBCONTRACTOR. For purposes of this Agreement, a bona fide dispute shall be deemed to exist upon the showing of one or more of the following conditions or events: (1) A claim or charge for defective, deficient or non-compliant Work not remedied or timely remedied; (2) A claim by a third party or reasonable evidence indicating a probable filing of such claim; (3) A claim or charge that the SUBCONTRACTOR has failed to make payments to anyone for labor, service or materials under this SUBCONTRACT AGREEMENT; (4) A claim that the Work of the SUBCONTRACTOR cannot be completed for the unpaid balance of the Subcontract Amount; (5) A claim or charge that the SUBCONTRACTOR'S Work may not be timely completed by the SUBCONTRACTOR; (6) A claim or charge that the SUBCONTRACTOR has caused delay, disruption, loss of efficiency, loss of productivity, or acceleration to the Project; (7) It is discovered that the SUBCONTRACTOR has improperly assigned, delegated or transferred a right, obligation, claim, interest or requirement without prior written approval of CONTRACTOR; and/or (8) The SUBCONTRACTOR'S persistent failure to carry out the Work in accordance with the Contract Documents or persistently fails to comply with the terms of this SUBCONTRACT AGREEMENT. In the event that any of the foregoing bona fide disputes exist, then CONTRACTOR shall be entitled to withhold any payment, or any part of any payment, in accordance with the terms of this provision.

16. Notwithstanding any other provision set forth in this Agreement, any payments made hereunder shall not in any way be construed as an acceptance by CONTRACTOR of the performance of this SUBCONTRACT AGREEMENT by SUBCONTRACTOR or acceptance of the materials, labor, services and equipment supplied to the Project, and CONTRACTOR reserves the right at any time whether prior to or subsequent to Project Closeout to require that SUBCONTRACTOR comply with the plans and specifications irrespective of whether

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monies for said Work have been paid to SUBCONTRACTOR.

17. It is expressly agreed that time is of the essence for this Agreement and that the payment of the consideration herein expressed is executory and conditioned upon completion of this Agreement and all Work described herein. The SUBCONTRACTOR agrees and acknowledges that SUBCONTRACTOR, and its Surety, shall bear and be responsible for all risk of loss of SUBCONTRACTOR'S Work, whether caused by any casualty, act of God, or otherwise, until the Project is fully completed and accepted by the OWNER, and Final Payment is issued.

18. Neither the payments herein required to be paid to SUBCONTRACTOR, nor any of the SUBCONTRACTOR'S obligations, nor any of the SUBCONTRACTOR'S Work, nor any of the SUBCONTRACTOR'S damages, claims, rights, or interests hereunder, shall be assigned, delegated or transferred without SUBCONTRACTOR first having received the expressed, written consent of CONTRACTOR. The SUBCONTRACTOR shall perform all Work with its direct employees unless approved by CONTRACTOR in writing and in advance.

19. In the event the SUBCONTRACTOR: (1) Fails to timely perform any of its obligations or undertakings herein; (2) Breaches any of the provisions, terms, conditions or covenants of this SUBCONTRACT AGREEMENT; (3) Becomes insolvent; (4) Enters into any unauthorized assignment or delegation of this SUBCONTRACT AGREEMENT; (5) Has a receiver appointed on account of SUBCONTRACTOR'S insolvency or otherwise; (6) Has any lien, encumbrance, bond claim, dispute, delay or claim asserted or threatened against the CONTRACTOR, surety or OWNER including also, any lien or levy by the Internal Revenue Service due to SUBCONTRACTOR'S nonpayment of taxes; (7) In the opinion of the CONTRACTOR causes or threatens to cause delay, disruption, loss of productivity, or inefficiency in the general progress of the building, structure or Project, or in any way adversely effects the quality of the Work; and/or (8) Fails to properly remedy a noticed violation of the SUBCONTRACT AGREEMENT; then in that event, CONTRACTOR shall have the right, but not the obligation, to any and all remedies either statutory, contractual, or otherwise, that CONTRACTOR may have at law or in equity, and further, CONTRACTOR may, with a full reservation of all remedies available, exercise its rights to any or all of the following additional contractual remedies or courses of action:

A. Investigate the cause of such breach or failure and to correct same in any way or manner whatsoever, including, but not without limitation to, the supplementation of SUBCONTRACTOR'S forces and to deduct all such corrective costs, expenses, losses and damages from SUBCONTRACTOR'S contract amount; and/or

B. Take charge of and complete the performance of this SUBCONTRACT AGREEMENT and the Work provided for herein, and to deduct all such corrective or completion costs, expenses and damages from SUBCONTRACTOR'S contract amount; and/or

C. Demand that SUBCONTRACTOR cure or remedy any and all breaches or failures within seventy-two (72) hours and in the absence of said cure or remedy, CONTRACTOR may terminate further performance by the SUBCONTRACTOR under this SUBCONTRACT AGREEMENT without further notice to SUBCONTRACTOR and renegotiate and re-execute contract or contracts for the completion of the Work required to be done under this SUBCONTRACT AGREEMENT with such persons, firms or corporations as shall be necessary in the opinion of the CONTRACTOR, and the SUBCONTRACTOR shall be responsible for any and all damages, costs and expenses which shall be deducted from SUBCONTRACTOR'S balance and the SUBCONTRACTOR remains responsible for any resulting delays and claims; and/or

D. Allow SUBCONTRACTOR to continue performance and accrue and accumulate all damages to set off against payments that shall otherwise be due or become due SUBCONTRACTOR including any and all losses, expenses, costs or damages for or on the account of the SUBCONTRACTOR; and/or

E. Pursue any and all other remedies, either statutory or otherwise, that CONTRACTOR may have at law or in equity.

In addition, should any SUBCONTRACTOR breach occur, or should any of the above events set forth in this Section 19 or its subparts result in the CONTRACTOR undertaking any of the remedies set forth herein, including any other remedy available at law or in equity, then the SUBCONTRACTOR and its surety, if any, shall be deemed to be liable to the CONTRACTOR for any and all damages,

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losses, costs and expenses which shall include, but not be limited to, all direct, indirect, consequential and incidental damages; any and all delay, disruption, loss of efficiency, loss of productivity, interruption, or time driven damages; extended field overhead; extended home office overhead; extended or additional general and field conditions; additional supervision; job overhead; insurance; Project facilities; completion damages; correction damages; clean up damages; and any other incidental or consequential cost or expense; as well as all attorney's fees, paralegal and legal assistant fees and costs, court costs, appellate attorney's fees and appellate court costs incurred by CONTRACTOR. In the circumstances of repair, correction, completion or payment of labor, services or materials arising out of the SUBCONTRACTOR'S Work, the contract damages shall also be deemed to include actual administrative overhead costs in an amount not less than ten percent (10%) and an additional ten percent (10%) for profit. SUBCONTRACTOR further agrees that a breach of any other Agreement between CONTRACTOR and SUBCONTRACTOR pertaining to this or any other construction Project shall constitute an absolute material breach under this SUBCONTRACT AGREEMENT, thereby enabling CONTRACTOR to assert any and all rights and remedies available hereunder. The CONTRACTOR shall further have the absolute right to apply any payments due SUBCONTRACTOR under this SUBCONTRACT to any claims, set offs, damages, expenses, costs or attorneys fee for any breach of this or any other Agreement with SUBCONTRACTOR. The parties agree as specific consideration, it is the intent of the parties that the SUBCONTRACTOR'S breach of any other Agreement with CONTRACTOR is a material breach of this Agreement and shall enable the CONTRACTOR, to withhold payment under this SUBCONTRACT, and to exercise all of the rights and remedies available to CONTRACTOR under this SUBCONTRACT.

20. SUBCONTRACTOR agrees to comply with all municipal, State and Federal laws and ordinances, all Federal OSHA and EEOC regulations and U.S. or international trade or patent agreements, and such other labor laws as may be applicable, and to comply with all laws and ordinances and shall reimburse and save the CONTRACTOR harmless from any annoyances, violations, claims, or fines having reference to the Work. SUBCONTRACTOR shall give proper authorities all requisite notices relating to the Work. SUBCONTRACTOR shall procure and pay for all necessary official licenses, tax, fine, fee, or permits for carrying on the Work described herein. SUBCONTRACTOR hereby represents and warrants unto CONTRACTOR that it has in fact secured and obtained all necessary and applicable licenses and permits to carry on the Work and, further, agrees that Federal and State tax laws, social security laws and unemployment compensation laws are a part of this Agreement and SUBCONTRACTOR'S obligations hereunder, as though fully set forth herein. Any and all transportation tax, sales tax, royalties and any other tax that might accrue through purchase of materials or amounts paid for labor by SUBCONTRACTOR or occasioned by the performance of this SUBCONTRACT AGREEMENT shall be paid in full by SUBCONTRACTOR.

21. CONTRACTOR shall not be liable to the SUBCONTRACTOR for any delay, loss of efficiency, interruption, acceleration, loss of productivity or the like as a result of fire, casualty, labor, dispute, riots, strikes, acts of God, or on the account of any circumstances caused or contributed to by SUBCONTRACTOR, or as a result of any act, neglect or fault of the OWNER, ARCHITECT, ENGINEER or CONTRACTOR. Should SUBCONTRACTOR be delayed or negatively impacted in the prosecution of its Work by any act, neglect or fault of the CONTRACTOR, OWNER, ENGINEER or ARCHITECT or by any other event, then SUBCONTRACTOR'S sole remedy shall be an extension of time without compensation for SUBCONTRACTOR to complete its Work pursuant to the terms of this Agreement; however, no time extension shall be given by CONTRACTOR and further SUBCONTRACTOR waives any entitlement to an extension, unless and until and as a condition precedent, a written claim therefore is presented in writing to CONTRACTOR by the SUBCONTRACTOR within seventy-two (72) hours of the beginning of the delay or disruption, or the condition giving rise to the delay or disruption, whichever shall first occur. The SUBCONTRACTOR agrees that its claim for an extension of time to complete its Work shall be its sole and exclusive remedy. In the event SUBCONTRACTOR is entitled to an extension of time, the SUBCONTRACTOR shall under no circumstance be entitled to any additional compensation, consideration, payment, expense, cost or damage associated with the extension of time.

22. SUBCONTRACTOR shall make all alterations, changes in the Work, furnish materials therefore and perform all extra Work or omit any Work CONTRACTOR may require in writing, without modifying this SUBCONTRACT AGREEMENT, at such reasonable addition to or deduction from the total payment to be paid to SUBCONTRACTOR as set forth hereunder. Any and all such alterations, extras or changes in the Work described herein shall be made by SUBCONTRACTOR only after having first received proper written authorization therefore from the authorized office or project manager of the CONTRACTOR and also SUBCONTRACTOR is issued a written Change Order by such CONTRACTOR, officer or project manager, either include a price adjustment or reserves price adjustment

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if one cannot be agreed upon by the parties. Under no circumstance shall CONTRACTOR be liable to SUBCONTRACTOR for any changes in the Work, alterations or extra Work or for any labor, services or materials furnished therefore without first having obtained, as a strict condition precedent, said written authorization and such written Change Order. Neither the conduct of the parties nor the statement, action, promise, or activity of any representative of the CONTRACTOR shall be deemed a waiver, modification, release, excuse or change to the absolute requirement for a written Change order. The SUBCONTRACTOR assumes all risk of no adjustment in the SUBCONTRACT price without such a written Change Order and proper authorization. In case of disagreement where no price adjustment can be agreed upon by the parties, SUBCONTRACTOR agrees to timely and diligently proceed with the Work pending the determination of the amount of the adjustment, and SUBCONTRACTOR agrees to be bound by the determination of the OWNER as to whether or not there shall be reimbursement for any such alteration, extra or change in the work, and to the OWNER'S determination as to the amount to be paid for such Work. SUBCONTRACTOR will have no transaction with OWNER or OWNER'S Representative, ARCHITECT or ENGINEER in regard to changes, extras or omissions in connection with the Work, but must negotiate only with and through CONTRACTOR.

23. SUBCONTRACTOR agrees to promptly pay for all materials and labor furnished to or used by SUBCONTRACTOR and shall compensate each Worker used on the Project on a weekly basis and, if required by CONTRACTOR, shall provide or furnish to CONTRACTOR a sworn statement in the form established in Florida Statutes Section 713.16.

24. In the event the SUBCONTRACTOR shall not perform its Work within the Duration of time as set forth in the CONTRACTOR'S Original Project Schedule, then for each day the SUBCONTRACTOR'S Work extends beyond the Duration of time for such Work as set forth in the CONTRACTOR'S Original Project Schedule, SUBCONTRACTOR shall be deemed to have delayed the Project and shall be deemed to have materially breached this Agreement. The CONTRACTOR'S Original Project Schedule is attached hereto as Exhibit "D". The SUBCONTRACTOR agrees to perform its Work at any time directed by the CONTRACTOR, and acknowledges and accepts that although the Duration of time to perform its Work as set forth in the CONTRACTOR'S Original Project Schedule remains the same, the actual start date of its Work may change. The SUBCONTRACTOR accepts the risks associated with the change in the date to start performance of its Work and agrees that its Work shall be performed in the Duration of time as set forth in the CONTRACTOR'S Original Project Schedule notwithstanding the fact that the actual start date for the activity of Work involved may change. The Duration of time shall be deemed to mean the number of days the SUBCONTRACTOR has been given to perform an identified activity or scope of Work, or portion thereof, in the CONTRACTOR'S Original Schedule. In the event of such breach, the SUBCONTRACTOR shall be liable for all damages as more particularly defined herein.

25. The SUBCONTRACTOR shall during the term of this Agreement, be required to immediately notify the CONTRACTOR in writing of any changes to his business address, telephone number, fax number, principal officers of the company, occurrence of tax liens, any event that may adversely affect this Agreement, or change in the legal status or financial condition of his/her company (as executory to this document). Failure to do so may, at the discretion of the CONTRACTOR shall be grounds for the SUBCONTRACTOR being declared to be in breach of this Agreement.

26. SUBCONTRACTOR shall provide a safe and sufficient site at all times for inspection of the Work by CONTRACTOR, ARCHITECT, OWNER or ENGINEER or their authorized Representative and shall within twenty-four (24) hours of receiving written notice from CONTRACTOR proceed promptly to take down all portions of the Work or remove from the Work site all materials which the ARCHITECT, OWNER or ENGINEER shall condemn or fail to approve and shall promptly repair, remedy, replace or correct such Work in accordance with the plans and specifications as interpreted by said ARCHITECT, ENGINEER or their Representative, regardless of whether SUBCONTRACTOR disagrees with the reason for any such condemnation or rejection of such Work.

27. In addition to any other warranties, SUBCONTRACTOR does hereby fully guarantee and expressly warrant for a period of one (1) year from the date of final acceptance of the Work by the OWNER, as that term is defined in the Contract Documents, against any and all problems, defects, deficiencies and deviations in said Work and materials furnished by SUBCONTRACTOR and/or against or any other cause which prevents the Work and materials supplied by SUBCONTRACTOR from functioning in a reasonable expected manner or fulfilling its intended purpose. Nothing contained in this Article or any other portion of this SUBCONTRACT AGREEMENT shall in any way be construed or considered as an attempt by SUBCONTRACTOR or CONTRACTOR to limit or shorten any applicable statutes of limitation relating to the breach of this Agreement. In addition, SUBCONTRACTOR hereby issues all statutory and common law warranties

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available under the applicable law in the jurisdiction where the project is being constructed, relative to SUBCONTRACTOR'S Work for the longest period of time as available under the applicable Statute of Limitation.

28. This contract, including the terms and conditions contained herein, embodies the entire Agreement between the parties and no other agreements, instruments, statements, promises, representations or papers, oral or otherwise except those set forth in this Agreement shall be deemed to exist or bind any of the parties hereto relating to the subject matter hereof. This Agreement shall not be modified except in writing executed by both parties. Further, the requirement "that the Contract shall not be modified except in writing" may not be waived, released, excused, altered or changed by either party or by the conduct of the parties.

29. Notices shall be deemed proper and valid for purposes hereunder if sent by facsimile, hand delivery, telegram or certified mail, return receipt requested, addressed to CONTRACTOR at the address stated above, or addressed to the SUBCONTRACTOR or in care of his/her representative on the Job site or at the address stated above.

30. The CONTRACTOR reserves the right to terminate this Agreement and all rights and obligations hereunder, with or without cause and at CONTRACTOR'S sole discretion and convenience, at any time by written notice to SUBCONTRACTOR. In the event CONTRACTOR terminates this Agreement, without cause, prior to SUBCONTRACTOR'S commencement of Work on site, then CONTRACTOR shall only be responsible to reimburse SUBCONTRACTOR for any reasonable out of pocket costs incurred by SUBCONTRACTOR for the actual preparation of performance of Work under this Agreement. In the event CONTRACTOR shall terminate this Agreement after commencement of the Work by the SUBCONTRACTOR, and whether with or without justifiable cause, damages recoverable by SUBCONTRACTOR, if any, shall be strictly limited to compensation to SUBCONTRACTOR for services performed through the date of such termination, subject to set off for damages, delays, expenses, attorneys' fees, losses, and costs to CONTRACTOR and any other monetary or economic loss to CONTRACTOR caused by SUBCONTRACTOR or caused by SUBCONTRACTOR'S breach of this Agreement.

31. All labor used by SUBCONTRACTOR shall be acceptable to the OWNER and CONTRACTOR and of a standard or affiliation that will permit the Work to be carried on harmoniously and without delay and that will not under any circumstances cause any disturbance, interference, safety concern or delay to the progress of the Work carried on by the OWNER or CONTRACTOR.

32. SUBCONTRACTOR shall as often as requested by the OWNER or by the CONTRACTOR, furnish within five (5) business days of receipt of such request, a sworn statement from the SUBCONTRACTOR and from all person(s) or company(s) who furnish labor, services or materials to the SUBCONTRACTOR stating under oath their respective name and address, the amount paid and the amount due or to become due, as well as a description of the Work performed and to be performed. The CONTRACTOR shall be authorized to rely fully upon such statement issued by the SUBCONTRACTOR and those who furnish labor, services and materials to SUBCONTRACTORS. In addition, SUBCONTRACTOR shall furnish to the CONTRACTOR written evidence and an accounting upon the request from CONTRACTOR relative to any payment or claim, including documentation to support any costs, expenses, or bills incurred for labor, services, equipment or materials used by the SUBCONTRACTOR for the Project. Failure of the SUBCONTRACTOR to furnish a sworn statement, written evidence, or an accounting as set forth herein, shall be deemed to be a material breach of this Agreement.

33. SUBCONTRACTOR shall turn the SUBCONTRACTOR'S Work over to the CONTRACTOR in good condition and free and clear of any and all defects, deficiencies, claims, suits, proceedings, damages, bond claims, liens, infringements, and/or encumbrances. To the fullest extent permitted by law, SUBCONTRACTOR shall protect, defend, indemnify and hold harmless the CONTRACTOR and OWNER, as well as CONTRACTOR and OWNER'S officers, directors, agents, sureties and employees (collectively "Indemnitees") from and against any and all demands, suits, defects, deficiencies, proceedings, damages, bond claims, attorneys' fees, losses, delays, expert fees, expenses, injuries, sickness, death, infringements, encumbrances, actions, liens, and/or claims of any kind, nature, or description (hereinafter collectively referred to as "CLAIMS") arising from the performance or failure to perform the Work by the SUBCONTRACTOR (whether directly or indirectly), or in any way growing out of or relating to the Subcontract Agreement or SUBCONTRACTOR'S involvement in the Project. Further, SUBCONTRACTOR shall, at its sole cost and expense, including attorneys' fees and expert fees, defend all such "CLAIMS" and upon Demand by CONTRACTOR pay any such "CLAIMS", including any judgments or awards established, regardless of whether such "CLAIMS" were caused in whole or in part by a person or party indemnified hereunder. Such contractual indemnity

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obligations shall not be construed to negate, abridge or reduce CONTRACTOR'S other rights, nor SUBCONTRACTOR'S obligations which would otherwise exist. SUBCONTRACTOR agrees that the indemnity obligations herein and the monetary amount of liability of SUBCONTRACTOR under such indemnification provision is limited to either:

- (1) an amount equal to the total Subcontract Amount; or
(2) in the event such "CLAIMS" should have been covered by a policy of insurance which the SUBCONTRACTOR was to secure or provide under this Subcontract Agreement, then in that event, the monetary limitation of liability shall be equal to the sum of the following:
A. The maximum limits of coverage applicable to such "CLAIMS" under the SUBCONTRACTOR'S insurance policies...
B. the total Subcontract Amount.

It is the intent of the parties that the SUBCONTRACTOR'S monetary limitation of liability under this indemnification provision shall be the total Subcontract Amount plus the maximum limits of applicable insurance coverage which SUBCONTRACTOR was required to provide under this agreement. Such limitation of liability as set forth herein is stipulated by the parties to bear a reasonable commercial relationship to this Agreement.

- A. the indemnitor(s);
B. any of the indemnitor's contractors, subcontractors, sub-subcontractors, materialmen or agents of any tier or their respective employees; or
C. the Indemnitee or its officers, directors, agents, or employees. However, such indemnification shall not include claims of, or damages resulting from, gross negligence or willful, wanton or intentional misconduct of the indemnitees or its officers, directors, agents or employees...

The obligations expressed in this Section 33 and its subparts shall also be the obligations of the SUBCONTRACTOR'S surety under any Subcontractor Performance Bond, except SUBCONTRACTOR'S surety will be excluded from paying damages related solely to either (1) personal injury damages; or (2) damages for destruction of tangible property other than the Project or property located on the Project.

The parties stipulate and agree that the CONTRACTORS promise to pay the first \$1,000.00 under the Subcontract Amount is the specific consideration for the indemnity obligations set forth herein in this Section 33 and its subparts. In addition, the duty to defend under the provisions are independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of SUBCONTRACTOR or any indemnified party.

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34. All terms, conditions, stipulations, covenants, promises and agreements contained in this SUBCONTRACT AGREEMENT shall be considered severable in the event one or more of them shall be determined hereafter by a court of competent jurisdiction to be invalid. CONTRACTOR and SUBCONTRACTOR intend that this Contract, except for any portion thereof so declared invalid, shall be considered valid, binding and in full force. Further, to the extent the Court determines that any such term, covenant or provision of this Agreement is invalid, then the Court is directed to reform such provision to provide an enforceable provision which is in conformity with the intent of the original provision. In the event that any terms, conditions, covenants, proposals or documents are incorporated into this SUBCONTRACT AGREEMENT and such provisions conflict in any way with the terms, conditions, covenants or obligations of this SUBCONTRACT AGREEMENT, then in that event, the parties agree that, notwithstanding any other provisions to the contrary, the terms, conditions and covenants of this SUBCONTRACT AGREEMENT shall control and govern over any other incorporated provisions that either conflict or are inconsistent with the terms of this SUBCONTRACT AGREEMENT.

35. It is understood by all parties that any attempt by SUBCONTRACTOR to modify the terms of this SUBCONTRACT AGREEMENT shall not be binding on CONTRACTOR unless and until CONTRACTOR has affirmatively agreed to each such modification(s) in writing. SUBCONTRACTOR'S performance of this SUBCONTRACT AGREEMENT without first obtaining CONTRACTOR'S written Agreement to SUBCONTRACTOR'S proposed modification(s) shall render said proposed modification(s) invalid and unenforceable without affecting the validity and enforceability of this SUBCONTRACT AGREEMENT and all terms and conditions herein.

36. CONTRACTOR and SUBCONTRACTOR, for themselves, their heirs, successor, executors, administrators and assigns, do hereby agree to full performance of the covenants of this Agreement and agree that the provisions of this Agreement and all rights and remedies provided herein shall be construed under and governed by the laws of the State of Florida. In the event of suit by the CONTRACTOR or its surety against the SUBCONTRACTOR or its surety or those with whom he deals on behalf of this Agreement, or suit by the SUBCONTRACTOR or its surety, then the venue of such suit shall be in Lee County, Florida and the SUBCONTRACTOR hereby waives for itself, its surety or those with whom he deals on behalf of this Agreement whatever rights it may have in the selection of venue. SUBCONTRACTOR and its surety do hereby further agree that the provisions concerning venue as contained herein shall be specifically binding upon them, notwithstanding the existence of any contrary venue provision which may be contained in any surety bond delivered to the OWNER by CONTRACTOR and/or its surety. The undersigned KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT OR ENTITLEMENT TO A TRIAL BY JURY. The parties further agree that this WAIVER OF TRIAL BY JURY is a material inducement for the parties to enter into this Agreement. The parties further agree that the prevailing party shall be entitled to an award of their attorney's fees, appellate attorneys' fees, paralegal fees and court costs, should suit be commenced by either party.

37. The additional miscellaneous terms, provisions, and conditions set forth in Exhibit "G" shall be incorporated herein by reference, and shall be a part of this SUBCONTRACT AGREEMENT. The miscellaneous terms, provisions, and conditions set forth in Exhibit "G" is solely to supplement the SUBCONTRACT AGREEMENT; however, should any terms, provisions or conditions set forth in Exhibit "G" be deemed to be in conflict or inconsistent with the provision set forth in the SUBCONTRACT AGREEMENT, it is understood and agreed that the SUBCONTRACT AGREEMENT shall control the terms set forth in Exhibit "G".

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CHRIS-TEL CONSTRUCTION

SUBCONTRACTOR {ToCompany.Name}

Federal I.D.# {Company.FederalID}

by \_\_\_\_\_
Signature Dated

by \_\_\_\_\_
Signature Dated

Howard L. Wheeler, Jr., President
Name Printed Title

\_\_\_\_\_
Name Printed Title

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

Project Manager
Initials: \_\_\_\_\_

SUBCONTRACT NO. {Contracts.ContractNumber}

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Contractor Initials \_\_\_\_\_