

EXHIBIT C
FORM OF CONTRACT

SUBCONTRACT AGREEMENT

This Subcontract Agreement (hereinafter the "Agreement") is made this _____ day of _____, 20____, by and between (**NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTOR**) (hereinafter "Subcontractor"), California Contractor's License Number # _____ and **CITY VENTURES CONSTRUCTION, INC.**, (hereinafter "Contractor"), California Contractor's License Number # 1003565 whose address is 3121 Michelson Drive, Suite 150, Irvine, CA 92612; Telephone: (949) 258-7555.

On or about _____, 20____, Contractor entered into a general contract (hereinafter the "Prime Contract") with **CITY VENTURES HOMEBUILDING, LLC** (hereinafter "Owner") to act as the general contractor for the construction of a project (hereinafter the "Project"): commonly known as _____ (**Project Name**), located in _____ (**City Name**), County of _____ (**County Name**), State of California. Subcontractor certifies that it holds a State Contractors License from the State of California, if required, and a copy of such license shall be submitted as current and active.

ARTICLE 1: CONTRACT PRICE, SPECIFICATION OF LABOR AND MATERIALS AND CONTRACT DOCUMENTS

1.1 Contract Price and Guaranty: Contractor shall pay Subcontractor for the work performed by Subcontractor under this Agreement based on the lump sum and/or agreed unit measures of pricing and labor rates, as set forth in Exhibit C to this Agreement. As used in this Agreement, the total amount payable to the Subcontractor is that amount set forth in the Subcontract Payment Schedule, and is referred to herein as the "Contract Price."

1.2 Specifications of Labor and Materials and Contract Documents: Subcontractor agrees to furnish all labor, materials, tools, equipment, supplies, transportation, delivery, rigging, hoisting, staging, scaffolding, temporary construction, task lighting, supervision, coordination, communication, shop and field engineering, design work and other facilities necessary to efficiently perform and timely complete the work covered by this Agreement (the "Work"), in strict accordance with the terms of this Agreement, consisting of each of the following:

- i. The Agreement
- ii. Exhibit A - Terms of Payment, including Lien Releases and W-9 Form
- iii. Exhibit B - Scope of Work and List of Plans and Specifications and any subsequent revisions thereto (collectively the "Plans and Specifications")
- iv. Exhibit C - Schedule of Unit Prices, Including Subcontract Payment Schedule
- v. Exhibit D – OCIP Addendum
- vi. Exhibit E - Guaranty

which are incorporated herein by this reference and referred to collectively as the "Contract Documents", and in accordance with the HIGHEST TRADE PRACTICES, and in a manner satisfactory to Contractor. Subcontractor acknowledges that the Plans and Specifications provided may be preliminary, or subject to change. Subcontractor agrees to maintain current versions of all

working drawings pertaining to its Work, and to implement changes thereto as the Work progresses in order to achieve proper and timely execution of the Work. Subcontractor agrees to furnish materials strictly complying with the requirements, Plans and Specifications furnished to it by Contractor, and to promptly replace any material rejected by Contractor with material satisfactory to Contractor, upon notification by Contractor that any material supplied by Subcontractor is unsatisfactory in any way. Where, in the Contract Documents, reference is to the work, specifications or obligations therein pertain to Subcontractor's trade, craft or type of work, such work, specifications or obligations shall be interpreted to apply to Subcontractor. The Work required to be performed by Subcontractor is not confined to any particular portion or section of the Plans and Specifications, but may be found throughout the Contract Documents. The approval by Contractor of shop drawings, manufacturer's literature, or any other written descriptions furnished by Subcontractor into the work, shall not relieve Subcontractor from furnishing materials conforming to the aforementioned requirements.

1.3 Manufacturer's Specifications: In addition to the Plans and Specifications, Subcontractor shall adhere to any and all manufacturer's specifications for installation of materials. If there is any conflict between Contractor's Plans and Specifications and any manufacturer's specifications, it is the responsibility of Subcontractor to bring such discrepancy to Contractor's attention in writing. Subcontractor's further work without first resolving such conflict shall be at its own risk. Any deviation from the manufacturer's specifications, the Plans and Specifications, and the Contract Documents may, at Contractor's discretion, result in Subcontractor replacing all materials to comply with such specifications and requirements at no cost to Contractor.

1.4 Availability of Materials, Labor and Equipment: Subcontractor, by acceptance of this Agreement, shall guarantee the timely availability of all materials, labor, and equipment necessary to complete the Work according to the established construction schedule of Contractor. Upon written request from Contractor, Subcontractor shall verify the source of any materials supplied to the Project by Subcontractor pursuant to this Agreement. Such verification shall include, without limitation, all bills of lading, invoices, freight tickets, sale agreements, purchase orders and other documentation that will verify who manufactured the materials, where such materials originated and were manufactured, and what component materials or parts were included in the manufacture of the materials. Subcontractor shall pay promptly all fees, freight, storage, taxes, union welfare or benefit payments, charges, damages and penalties, or other incidental expenses associated with the Work, and Subcontractor acknowledges that all such taxes and payment have been included in the Contract Price. Subcontractor shall provide copies of all permits, licenses, and similar permissions obtained, and fees paid, to Contractor. Subcontractor warrants and represents that all possible contingencies to completely perform the Work have been included in the bid submitted by Subcontractor to Contractor.

1.5 Discrepancies Between Contract Documents: In the event of any conflict or discrepancy between various Contract Documents, the terms and provisions of the Agreement shall control over the remaining Contract Documents. In the event of any discrepancy between various Contract Documents, the most recent Plans and Specifications' dimensions shall take precedence over measurement by scale. A large scale drawing shall take precedence over the smaller. In any case of discrepancy, whether actual or suspected, between the figures, or the figures and the scale of the plans and specifications, the matter shall be submitted to the Contractor in writing within two (2) business days of discovery. If the Subcontractor proceeds with the Work based on any such error without approved instructions from the Contractor, the Subcontractor shall make good and correct, without cost to

Contractor, any resulting damage, defect or non-conforming or deficient Work. The foregoing provisions include specification typographical errors and drawing notational errors where the intent is unclear. Should the Plans vary from the Specifications, then the Specifications shall govern. Should there be any discrepancy between the Plans and the Specifications, or both, and any governmental laws or regulations, then those which are more stringent and/or maximum shall govern.

1.6 Work During Disputes: In the event of any dispute between Contractor and Subcontractor concerning the Work, Subcontractor will not stop the Work, but will prosecute the disputed and non-disputed Work diligently to completion. The dispute concerning the Work shall be submitted for resolution in accordance with Article 32 of this Agreement.

ARTICLE 2: [] CHECK IF APPLICABLE. FOR DESIGN BUILD SUBCONTRACTORS

2.1 DESIGN SERVICES. Subcontractor shall be responsible for procuring and furnishing all design and engineering services for _____ relating to the Project, and shall be responsible for coordinating, monitoring, managing and finalizing all other design services associated therewith, as set forth in Exhibit “B” (collectively "Design Services"), by and through qualified and experienced design professionals duly licensed and registered in the State of California and by any other required local or professional authorities and approved by Contractor in advance. At the request of Contractor, Subcontractor shall supply copies of all necessary licenses and registrations to Contractor.

2.1.1 Contractor and/or Owner may retain the services of consultants and design professionals for the Project. Any drawings, specifications, work or services or any other information or documents provided by Contractor and/or Owner, directly or through consultants, to Subcontractor in connection with the Agreement or the Work are provided solely for the convenience of Subcontractor only, and without any representation, warranty or guarantee of accuracy, adequacy, correctness or completeness by Contractor or Owner, and Owner and Contractor hereby expressly disclaim, on their behalf and on behalf of any of the consultants, all such warranties, guarantees and representations. Except to the extent the information, documents and materials supplied by Contractor and/or Owner or their consultants contain inaccurate information that was not known to Subcontractor to be inaccurate (and such inaccuracy would not have been reasonably discovered by Subcontractor based on its skills, experience and knowledge or their diligent review of such information, documents and materials and the terms and scope of the Contract Documents), Subcontractor assumes the risk of such conditions and shall fully complete the Work within the Contract Price and by the Project completion date established by Contractor with no adjustments.

2.1.2 Subcontractor shall cooperate with Contractor’s and Owner’s consultants, and coordinate, monitor, and manage the services of its consultants and take all necessary steps to timely furnish the Design Services, including the completed and finalized plans and specifications in accordance with the Project design and Project Schedule for incorporation by the Architect into the overall plans and specifications for the Project. In furtherance of and without in any way limiting the foregoing, Subcontractor shall diligently review all work, services, drawings and specifications furnished by Contractor’s and Owner’s consultants for hazards, inconsistencies, discrepancies, inaccuracies, errors, incompleteness or lack of detail which should be apparent to Subcontractor given Subcontractor’s skills, experience and training or discernible by Subcontractor upon a reasonable and

diligent review of such work, services, drawings, and specifications and shall promptly notify Contractor in writing of any hazards, inconsistencies, discrepancies, inaccuracies, errors, incompleteness or lack of detail of which Subcontractor becomes aware and, prior to proceeding with any of the Work affected thereby, to obtain written instructions from Contractor on how to proceed. Subcontractor also shall promptly notify Contractor and any of Contractor's and/or Owner's consultants in writing of any changes or revisions to the Design Services, including any drawings or specifications, which might affect the Work, services, drawings and specifications of Contractor, Owner and/or their consultants.

2.1.3 Subcontractor's Design Services include the complete code compliant design for its "Work." Subcontractor warrants that the design and construction will be of the quality, efficiency and economically sound for a project of this type, quality and magnitude. Subcontractor shall be responsible for the full coordination of all design documents with other design consultants and/or subcontractors including but not limited to; architectural, structural, electrical, fire protection, life safety, enclosure and all other such system designs to ensure that a fully coordinated set of construction documents.

2.4.4 Subcontractor shall (a) submit its Design Services, including the applicable plans and specifications to Contractor for Contractor's prior approval; (b) as necessary and/or required by applicable governmental agency, sign and affix with its registration stamp or seal that portion of the Project plans and specifications created by Subcontractor, including any approved amendments, modifications and/or supplements thereto, (c) from time to time (as appropriate to meet the Project design and Project Schedule), submit for approval and obtain all necessary approvals for the Design Services (including any amendments, modifications and/or supplements thereto approved by Contractor) from the appropriate governmental authorities or other parties having approval rights relating to the Project; (d) at all times perform the Work and act with the normal and customary degree of care and skill used by members of the professions practicing under similar conditions at the same time and locality and on projects of similar size, scope and complexity; and (e) document all changes in the construction documents made during the course of the Work, and provision of a complete set of As-Built Drawings at the conclusion of the Work. Subcontractor agrees that all changes in the construction documents will be depicted in "clouds" shown on the Subcontractor's drawings, and copies of any construction documents showing such changes shall be promptly provided to Contractor for Owner's written approval.

2.4.5 All documents, drawings, plans, drafts and final reports, masters, work papers, memoranda, graphics and other materials, both hard copy and electronic versions, including duplicates thereof, generated or compiled pursuant to this Agreement and any change orders hereto are instruments of professional service (Instruments). Upon full payment for Subcontractor's Work hereunder, excluding that Work in dispute, the Instruments as an assemblage describing this specific unique Project shall become the exclusive property of the Owner, but only for the use of Owner for this specific Project. Subcontractor's office standard details, drawings and specifications shall remain the exclusive property of the Subcontractor. Notwithstanding the foregoing, the Owner may choose, at its option, to leave the original or a copy of any such Instruments in the possession of Subcontractor and Subcontractor may dispose of Owner unclaimed Instruments ten (10) years after the date of this Agreement, upon 30 days' notice to Owner.

2.4.6 In the event that that this Agreement is terminated for any reason, Subcontractor agrees to fully cooperate with Contractor and Owner with the transition to a new design professional, including without limitation, promptly delivering to Owner all Instruments, and if requested by Owner, providing written notice to applicable governmental agency(ies) that Subcontractor is no longer a design professional of record and that such other design professional designated by Owner shall be the new design professional of record. Subcontractor recognizes that time is of the essence and that any delay to in complying with these obligations shall cause Contractor and Owner significant damages. **SUBCONTRACTOR AND CONTRACTOR AGREE THAT IT WOULD BE EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE TO FIX THE DAMAGES SUFFERED BY CONTRACTOR AND OWNER IN THE EVENT THAT SUBCONTRACTOR DOES NOT COMPLY WITH THE OBLIGATIONS SET FORTH IN THIS PARAGRAPH. CONSEQUENTLY, SHOULD SUBCONTRACTOR FAIL TO DELIVER THE INSTRUMENTS TO OWNER OR PROVIDE WRITTEN NOTICE TO THE APPLICABLE GOVERNMENTAL AGENCY(IES) WITHIN TWO (2) DAYS OF WRITTEN NOTICE FROM OWNER, SUBCONTRACTOR SHALL PAY TO CONTRACTOR AS LIQUIDATED DAMAGES FOR SUCH BREACH AND NOT PENALTIES THE SUM OF FIVE THOUSAND DOLLARS (\$5,000.00) PER CALENDAR DAY AFTER THE SECOND DAY FOLLOWING OWNER’S REQUEST FOR INSTRUMENTS OR WRITTEN NOTICE TO THE GOVERNMENTAL AGENCY(IES).**

ARTICLE 3: TIME FOR COMMENCEMENT AND COMPLETION OF WORK

3.1 Start Work Orders: Contractor will, from time to time, issue written commitments (“Start Work Orders”) identifying specific portions of which the Work to be performed. Contractor shall have no obligation to issue any Start Work Orders during the term of this Agreement. **THIS AGREEMENT IS NOT AN AUTHORIZATION TO PROCEED WITH WORK, AND SHALL NOT BECOME EFFECTIVE WITH RESPECT TO THE WORK OF SUBCONTRACTOR UNLESS AND UNTIL CONTRACTOR ISSUES START WORK ORDER(S) TO SUBCONTRACTOR AUTHORIZING THE SPECIFIC WORK OF SUBCONTRACTOR TO BE PERFORMED, AND THE AGREEMENT SHALL BE BINDING ONLY AS TO THE WORK AUTHORIZED BY CONTRACTOR.** Subcontractor shall perform no Work nor receive any compensation for such Work without receiving Contractor’s written Start Work Order for such Work. Subcontractor agrees to commence such work as may be authorized by Contractor by means of Contractor’s Project Schedule as directed by Contractor’s field superintendent. Contractor’s Start Work Order shall be effective immediately upon issuance by Contractor without need for further acceptance thereof by Subcontractor. If the Work authorized by a Start Work Order is not commenced on the date specified in the Project Schedule, Contractor may, in its sole discretion, declare such Start Work Order null and void. Subcontractor shall a) keep itself thoroughly informed as to the progress of the Project; b) commence the Work within seventy-two (72) hours after receiving a Start Work Order or as otherwise specified in the Project Schedule received from Contractor; c) diligently pursue the Work as rapidly as the conditions of the Project will permit; d) efficiently coordinate its Work with that of Contractor and other subcontractors so as not to interfere with, disrupt, or delay the progress required to conform to the Project completion date established by Contractor; and e) complete the Work in accordance with the time schedule established therefor by Contractor. Subcontractor is authorized (and required) to commence only the specific work identified in the Start Work Order by Contractor and in the construction sequence and shall receive payment under this Agreement only for such work specifically requested by Contractor in writing.

3.2 Progress Schedule: Contractor may, but shall not be obligated to, furnish Subcontractor with a progress schedule for all or any portion of the Work, which, if furnished, may be amended from time to time by Contractor and shall be considered to be a part of this Agreement. As to that portion of the Work covered thereby, such schedule shall control over any other provision of the Agreement regarding time for performance. Time for performance, whether established by progress schedule, Project Schedule or any other provision hereof, shall be of the essence and Subcontractor shall be liable to Contractor for any and all damages, including, but not limited to, consequential damages caused by delays of Subcontractor. Subcontractor shall confine all operations at the site to areas permitted by law, ordinance, permits and Contract Documents, and shall not unreasonably encumber the site with materials or equipment.

3.2.1 Catastrophe: If the Project is destroyed, in whole or in part, by fire or other catastrophe, Contractor shall thereafter have the right, in its sole discretion to:

(i) Terminate the Agreement in its entirety. If so terminated, both parties shall then be relieved from any further obligation hereunder and Subcontractor will be paid for all Work performed and incorporated into the Project prior to the catastrophe;

(ii) Terminate the Agreement as to the portion of Work destroyed by the catastrophe. If the Agreement is so terminated in part, both parties shall then be relieved from any further obligation hereunder as to the portion of the Work destroyed by the catastrophe, Subcontractor will be paid for all Work performed and incorporated into the Project prior to the catastrophe, and the remainder of the Agreement shall remain in full force and effect; or

(iii) Affirm the Agreement. If the Agreement is affirmed, Subcontractor will be paid for all Work performed and incorporated into the Project prior to the catastrophe and Subcontractor shall then replace all Work destroyed by the catastrophe pursuant to the schedule established by Contractor at the Contract Price established for the Work destroyed by the catastrophe.

3.3 Multiple Stop Work Orders: The parties hereto acknowledge that the Work covered by this Agreement is intended to be performed pursuant to multiple Start Work Orders. If, in order to avoid possible escalation in the cost of materials provided by the Subcontractor as part of the work covered by this Agreement, Subcontractor elects to purchase such materials in advance of any particular portion of the Project commenced by Contractor, then Subcontractor acknowledges that it is purchasing such materials at its own risk and that Contractor shall not pay nor be liable for the cost of such materials purchased by the Subcontractor unless and until such applicable phase of the work in which such materials are to be incorporated commences and such materials are either incorporated into such work of improvement.

3.4 Suspensions: Contractor in its sole and absolute discretion for any reason or no reason whatsoever may at any time, with or without cause, suspend performance of all or any part of the Work by giving written notice to the Subcontractor and such suspension shall take place immediately upon Subcontractor's receipt of such notice. Such suspension may be continued by the Contractor during which period Contractor may, at any time, by written notice, require Subcontractor to resume performance of the Work or terminate that portion of the Work which has been suspended. Contractor

shall not be liable for any additional costs, damages or anticipated profits incurred by Subcontractor or its Sub-subcontractors and the Contract Price shall not be increased during the period of suspension, except the actual costs incurred by Subcontractor, excluding overhead and profit for (a) the purpose of safeguarding the Work and material and equipment in transit or at the worksite during the period of suspension, or (b) Subcontractor's or its Sub-subcontractor's rented equipment which are maintained at the worksite. In the event the Work on the Project ceases or is interrupted by fire, catastrophe, earthquake, acts of God, war or the existence of a state of war or acts of foreign enemy, any labor difficulties, shortages of materials, any government regulation prohibiting, preventing, or regulating the construction industry, or other causes beyond the control of Contractor, or if Contractor shall consider it inadvisable to proceed with the Work hereunder as a result of the above, then and in that event, this Agreement may be postponed or terminated in accordance with the provisions of Paragraph 22 at the option of the Contractor. If Contractor, in its opinion, postpones and later deems it advisable to resume the Work on the Project, Subcontractor agrees to promptly re-commence the Work upon receiving written notice from Contractor.

3.5 Subcontractor's Remedy for Delay: In the event that Subcontractor is delayed in the work to be performed hereunder by the act of negligence of Contractor, Contractor's employees, or other subcontractors, Subcontractor's remedy shall be limited solely to an extension of time, obtained by Subcontractor in conformity with the procedures described in this Agreement. Subcontractor agrees and understands that in no event shall it be entitled to monetary payment over and above that which is specified in this Agreement, and any duly executed modifications or change orders executed in writing subsequent thereto, and that Subcontractor shall not be entitled to any damages of any kind whatsoever arising by reason of delay, including, but not limited to, money actually expended by reason of such delay for salaries, equipment and materials, anticipated profits, and overhead or indirect costs.

ARTICLE 4: PAYMENT

Contractor agrees to pay Subcontractor for the full and faithful performance of the Work based on the prices set forth in Schedule "B" to Exhibit "C" hereto for the Work authorized in the Start Work Order(s) issued by Contractor as set forth below.

4.1 Applications for Payment: On no more frequently than once a month, following the issuance of a Start Work Order by Contractor, and commencement of construction by Subcontractor pursuant thereto, Subcontractor shall submit to Contractor an application for payment specifying the percentage of Work completed and the corresponding amounts payable by Contractor pursuant thereto. Subcontractor shall deliver a complete billing package comprised of: (a) an original invoice tied to and matching Schedule "B" to Exhibit "C"; (b) a copy of the items to be included in the billing; (c) lien releases from Subcontractor on Contractor's forms; (d) payroll records as contemplated by Labor Code Section 1174, for all of Subcontractor's employees who provided labor at the Project for the time period when the Work included in the application of payment was performed, marked or obliterated only to prevent disclosure of an individual's full social security number, but which shall provide the last four digits of the social security number, and which shall contain information sufficient to apprise Contractor of the Subcontractor's payment status in making fringe or other benefit payments or contributions to a third party on the employee's behalf; and (e) lien and laborer releases from Subcontractor's employees, suppliers or sub-tier subcontractors on Contractor's forms, in each case,

for all work performed since the last billing package submitted. Billing for change orders will require the same billing package plus a Start Work Order form executed by Contractor.

4.2 Invoicing: Contractor shall pay the invoiced amount for the work completed since the last application for payment, as approved, from which shall be deducted the retention amount, if any, in the percentage set forth below.

4.3 Retention: Contractor may retain 10 percent of the total Contract Price pursuant to Exhibit "C". **THE RETAINED PERCENTAGE SHALL BE PAID WITHIN THIRTY-FIVE (35) DAYS AFTER SUBCONTRACTOR PROVIDES CONTRACTOR WITH ALL APPLICABLE LIEN RELEASES, PROOF OF PAYMENT OF ALL EMPLOYEE WAGES AND BENEFITS AND AFTER COMPLETION AND ACCEPTANCE OF THE WORK BY CONTRACTOR, THE CITY, COUNTY OR ANY OTHER GOVERNING AGENCIES HAVING JURISDICTION OVER THE WORK, THE FEDERAL HOUSING ADMINISTRATION OR VETERANS ADMINISTRATION, IF APPLICABLE, AND OTHER INSPECTORS HAVING THE DUTY AND OBLIGATION TO INSPECT THE CONSTRUCTION OF THE PROJECT AND SUBCONTRACTOR'S FULL AND FAITHFUL PERFORMANCE OF ALL OTHER PROVISIONS OF THIS AGREEMENT.**

4.4 Lien Releases: Invoiced payments will be made only if Subcontractor's progress and workmanship are acceptable to Contractor, which acceptance shall not be unreasonably withheld, and Subcontractor, before receiving any payment, shall furnish Contractor releases stating all labor, materials and other items used by Subcontractor in the performance of the Work have been paid in full or will be paid in full upon receipt of the payment then being requested. Subcontractor agrees to furnish Contractor with copies of all purchase orders, invoices and other evidences of origin, and all manufacturers' warranties covering all materials incorporated into the Work. If requested to do so by Contractor, Subcontractor shall execute any other documentation reasonably necessary to ensure the lien-free status of the property with respect to the performance of the Work. Any payment by Contractor made hereunder before completion and acceptance of all of the work covered by this Agreement shall not be construed as evidence of acceptance of any part of Subcontractor's work. If at any time during the progress of the Work there should be evidence of any lien, stop notice or claim for material or equipment furnished or work performed pursuant hereto for which Contractor or its property may become liable, Contractor shall have the right to retain money due Subcontractor hereunder or under any other Agreement with Subcontractor in an amount sufficient to make Contractor whole against any such lien or claim.

4.5 Subcontractor's Obligation to Use Funds to Discharge Obligations Incurred in the Performance of the Work: The parties hereto agree that all funds paid to Subcontractor shall first be used by Subcontractor to discharge obligations incurred by Subcontractor in performance of the Work and the funds shall not be used for any other purpose. It is further agreed that all payments received by Subcontractor from Contractor shall be deemed to be and constitute a trust fund to be used and applied by Subcontractor first in payment for all materials, labor, and any and all other obligations incurred in connection with the Work, prior to its use and application by Subcontractor for its own or for any other purpose. The obligations referred to herein shall be those which, if not satisfied, would or could eventually be an obligation of Contractor or which would or could result in subjecting the Project to a mechanic's lien or other encumbrance on the real property upon which the Project is being constructed.

4.6 Billing of Change Orders: Any authorized extra labor shall be paid at the rates set forth in Exhibit “C” hereto. All billing requests for extras will be paid only if the complete billing packages are **submitted within sixty (60) days after the completion of the extra work for which payment is being requested. ANY EXTRA WORK, CHANGE ORDER OR CLAIMS FOR EXTRA WORK PERFORMED BY SUBCONTRACTOR WITHOUT PRIOR WRITTEN AUTHORIZATION FROM CONTRACTOR’S VICE PRESIDENT AND DIRECTOR OF PURCHASING – NOT CONTRACTOR’S SUPERINTENDANT – IS NOT DEEMED CONTRACTED AND SUBCONTRACTOR AGREES THAT CONTRACTOR HAS NO OBLIGATION TO PAY FOR SUCH WORK.**

4.7 Withholding of Payment: No progress payment or any partial or entire use or occupancy of the Project by the Contractor shall constitute an acceptance of any work by Subcontractor not in accordance with the Plans and Specifications. Contractor may decline to approve an application for payment and may withhold payment in whole or in part to the extent necessary to protect from loss because of (a) defective work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of the Subcontractor to make payments to its sub-tier subcontractors for labor, materials or equipment; (d) damage to another subcontractor’s work occasioned by the negligence of Subcontractor; (e) unsatisfactory prosecution of the work hereunder by the Subcontractor; or (f) failure of Subcontractor to supply all required certificates and endorsements of insurance.

4.8 Joint Checks: Subcontractor shall provide Contractor written evidence of all persons or entities furnishing labor, materials, services, and equipment to the Project on behalf of Subcontractor. Contractor may, in its sole and absolute discretion, pay Subcontractor by check made jointly payable to Subcontractor and to any person or entity that may be in a position to assert lien rights against the Project. Contractor may deliver the joint check directly to Subcontractor’s joint payee, including without limitation any supplier or lower tier subcontractor of Subcontractor, and provide Contractor with a copy of the joint check to Subcontractor, who will then have the duty and obligation to successfully negotiate the joint check with the joint payee by a means that ensures the joint check satisfies all payment obligations owed to the joint payee as of the through date of Subcontractor’s Application for Payment to which the joint check applies.

4.9 Payment for Materials and Equipment: The cost of materials and equipment not physically incorporated into the Project will not be paid. Materials stored or intended for future use at the site are not considered to be physically incorporated into the Project.

4.10 Final Acceptance: “Final Acceptance” of the Project by Contractor shall occur after all work is fully completed, including all punch-list and pick-up items. Prior to Final Acceptance, Subcontractor shall deliver to Contractor, in writing, all necessary approvals of applicable federal, state, or local agencies and/or authorities, including Certificates of Occupancy, if applicable. All guarantees, brochures, operating instructions, etc., must be supplied before the Project can receive Final Acceptance. Should local laws not provide for recordation of a Notice of Completion, then completion of the Project (“Completion”) shall be the same date as Final Acceptance, above defined. Neither recordation of a Notice of Completion of the Project by Contractor, payment to Subcontractor by Contractor of the full Contract Price, nor any acceptance, occupation or utilization of said Project or

any part thereof by Contractor shall relieve Subcontractor of liability for defective materials or workmanship used in the construction of the Project nor for failure to construct the Project according to the requirements of the Contract Documents. Acceptance of final payments shall constitute a waiver of all claims by the Subcontractor against the Contractor with respect to Contractor's performance of all its obligations under this Agreement, except any claim previously made in writing by Subcontractor and which remains unsettled.

ARTICLE 5: CHANGES IN WORK

Contractor shall have the right at any time, by a written Change Order signed by Contractor, to make changes in any one or more of the following parts of this Agreement: (a) the Plans and Specifications; or (b) the time for performance of all or any portion of the Work. Under no circumstances shall field tickets constitute a written Change Order authorized by Contractor.

5.1 Any extra work, change order or claims for extras performed by Subcontractor without prior written authorization from Contractor – not Contractor's Superintendent – is not deemed contracted and Subcontractor agrees that Contractor has no obligation to pay for such work. Any claim by Subcontractor for a Change Order under this Agreement must be submitted to Contractor in writing within thirty (30) days from the date of receipt by Subcontractor of the written notification of any change by Contractor. Nothing contained herein shall excuse Subcontractor from proceeding with the Work as changed even though a mutually-agreed price or time for performance change has not been reached, provided a signed Construction Change Directive directing Subcontractor to proceed with the Work has been delivered to Subcontractor.

5.2 A Change Order shall be based upon agreement among the Contractor and Subcontractor.

5.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Subcontractor shall proceed promptly, unless otherwise provided in the Change Order.

5.4 In no event shall the Subcontractor receive any compensation in excess of the Contract Price nor shall Subcontractor be entitled to receive any compensation for extra Work, whether partially or fully completed, or simply proposed, unless such additional Work is authorized by a written Change Order signed by the Contractor. Only Contractor shall have the right to issue a written Change Order to Subcontractor authorizing an addition, deletion or other revision in the scope of the Work and/or an adjustment in the Contract Price or the Project Schedule. **Except as provided herein, in no event shall Subcontractor receive any compensation in excess of the Contract Price nor shall Subcontractor be entitled to receive any compensation for additional Work whether partially or fully completed or simply proposed, unless such additional Work is authorized by a written Change Order in a change order form acceptable to and signed by Contractor.** Subcontractor waives the right to receive any compensation for additional Work and agrees that the Contractor shall not be obligated to pay for any additional Work unless Subcontractor and Contractor have complied with all of the provisions of Article 5 of the Agreement. **SUBCONTRACTOR UNDERSTANDS AND AGREES THAT IT WILL NOT PROCEED WITH ANY EXTRA WORK OR WORK IT CONSIDERS A CHANGE ORDER UNLESS SUCH ADDITIONAL WORK IS AUTHORIZED**

BY A WRITTEN CHANGE ORDER IN A CHANGE ORDER FORM ACCEPTABLE TO AND SIGNED BY CONTRACTOR.

5.5 Change Orders: A Change Order is a written instrument prepared by the Subcontractor and signed by the Contractor and Subcontractor stating their mutual agreement upon all of the following:

1. the change in the scope of the Work;
2. the amount of the adjustment, if any, in the Contract Price; and
3. the extent of the adjustment, if any, in the Project Schedule.

Methods used in determining adjustments to the Contract Price may include a lump sum negotiated price, the unit price contained in the Project Agreement, the cost of the extra work plus a fee, or such other adjustment agreed to in writing by Contractor and Subcontractor. In the event the parties are unable to agree on an adjustment to the Contract Price, an equitable adjustment in the Contract Price will be made consistent with the overall pricing included in the Project Agreement.

5.6 Minor Changes in the Work: Contractor will have authority to order minor changes in the Work not involving adjustment in the Contract Price or Project Schedule and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Contractor and Subcontractor. The Subcontractor shall carry out such written orders promptly.

ARTICLE 6: SUBCONTRACTOR'S KNOWLEDGE OF REQUIREMENTS

6.1 Subcontractor acknowledges its inspection of the site for the Work and that it has thoroughly examined the Contract Documents, and the Plans and Specifications with the understanding that the provisions relating to the Work may be set forth throughout different parts of the Contract Documents and the Plans and Specifications; it being the prime purpose of this Agreement to provide for the entire performance and completion of this Subcontractor's particular portion of the Project. Subcontractor shall be solely responsible for verifying with Contractor's representative that it possesses the most current set of Plans and Specifications, and all options prepared and approved for construction by Contractor. If Subcontractor, during the performance of the Work, finds discrepancies between the Plans, physical conditions, errors and omissions in the plans or in the layout as given and/or Specifications, it shall be Subcontractor's responsibility to immediately notify Contractor in writing. Any work performed after such discovery, until authorized to proceed, shall be done at Subcontractor's risk, until a satisfactory remedy is directed by the Contractor. If Subcontractor proceeds with the work in such a manner as to foreclose alternative design solutions, Subcontractor's compensation for the Work may be limited to any alternative costing that would have been available to Contractor before Subcontractor continued with the Work. If Subcontractor proceeds with the Work past a point where verification of quantities is possible, Subcontractor's compensation therefore will be limited to the lesser of the Contract Price or the unit measure of cost for the verified quantity. Prior to ordering any materials or performing any work, Subcontractor shall verify all measurements or conditions at the Project, and shall be responsible for the correctness of same. No extra charge or compensation shall be allowed on account of differences between actual dimensions or conditions, and the measurements and conditions which may be found as indicated in the Plans and Specifications. The soils and geology reports available to each bidder were prepared by Contractor's or Owner's consultants and made only for the purpose of study and design. Contractor assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the reports, investigations or of the borings which have been made, and there is no warranty or guarantee, either express or implied, that the conditions indicated by the

reports, investigations, or borings are representative of those existing throughout the Project, that unanticipated developments may not occur, or that materials other than, or in proportions different from those indicated, may not occur. Subcontractor agrees to undertake the Work subject to all site conditions as they now exist or may arise.

6.2 Subcontractor further acknowledges and agrees that its acceptance of this Agreement is based solely on its own knowledge and judgment, and not on any representation of Contractor or any other party. The commencement of work by Subcontractor shall be deemed to be and shall constitute acknowledgement by Subcontractor that no such deficiency or condition exists and that Subcontractor's work can and will be performed in a good and workmanlike manner in full compliance with the provisions of this Agreement. All work shall be made to conform to actual final conditions as they develop in the course of construction.

6.3 Subcontractor shall protect the work of all subcontractors and Contractor during the course of its work and shall be fully responsible for the protection of all existing structures, curbs, landscaping and adjacent property. In the event of damage to Subcontractor's Work by others or by vandalism, Subcontractor shall repair or replace such Work at the request of Contractor, and Subcontractor shall be compensated therefor at the labor and material rates set forth in Exhibit "C" hereto, provided however, that Subcontractor shall bear all risk of loss for any portion of the Work or materials necessary to perform the Work until the same are installed in the Project.

6.4 Subcontractor acknowledges and agrees that only Contractor's Chairman, President and Vice Presidents are authorized to modify, amend or alter this Agreement or to issue Change Orders, to issue Start Work Orders or otherwise speak for Contractor with respect to this Agreement.

ARTICLE SEVEN: LEGAL COMPLIANCE

7.1 General: Subcontractor warrants and represents it is familiar with all applicable laws, ordinances, codes, rules, standards and regulations and that it, its employees, and all others acting under its direction or control, shall at all times comply with and abide by all local, state and federal statutes, ordinances, rules and regulations, and any amendments thereto, as well as those of any other public body having authority concerning the Work, including but not limited to, California Labor Code Section 218.7, the building codes of the governmental entity having jurisdiction over the Project, the Occupational Safety and Health Act of 1970, the Immigration Reform and Control Act of 1986 (the "Immigration Act"), all applicable equal employment opportunity laws and requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive Orders 11246, 11375 and 11478 (relating to the establishment of OSHA and all safety regulations promulgated pursuant thereto); The Clean Water Act; The Age Discrimination in Employment Act, the Americans with Disabilities Act, South Coast Air Quality Management District Rule 403 (governing fugitive dust emissions); the California Fair Employment Practices Act, the California Plan, the Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), whether or not Subcontractor itself is independently subject to the provisions thereof, the Storm Water Pollution Control Guidelines for the State of California, and any other applicable statutes or ordinances. Subcontractor shall exercise full responsibility for compliance with all applicable laws by Subcontractor, its agents, employees, suppliers and subcontractors with respect to its portion of the Work on this Project. Subcontractor, on its behalf and on behalf of its employees

and agents, shall receive and respond to, defend and be responsible for any citation, order, claim, charge, criminal or civil actions, arising by the failure of Subcontractor or its agents, employees, suppliers and subcontractors to so comply, regardless of whether such non-compliance results from active or passive acts or omissions or whether such non-compliance is the sole or a contributory cause of any of those matters against which Subcontractor is obligated hereunder to indemnify and hold Contractor and Owner harmless.

7.1.1 Storm Water Pollution Prevention Plan Compliance: Subcontractor shall comply with Contractor's Storm Water Pollution Prevention Plan ("SWPPP"), applicable storm water permit ("Permit"), and Owner's Storm Water Compliance Guidelines ("Guidelines"). Subcontractor shall follow the Best Management Practices set from the SWPPP for any Work performed at the Project by the Subcontractor. A copy of the SWPPP, Guidelines and Permit are available upon request from Contractor. Subcontractor shall pay Owner an amount equal to all fines, fees, expenses and other penalties assessed against Owner by any governmental body due to Subcontractor's violation of the Permit or Subcontractor's obligations herein.

7.2 Immigration: Subcontractor specifically warrants and agrees it does not and shall not knowingly hire or continue to employ aliens not authorized to work in the United States, it has and shall continue to verify the employment documentation specified in the Immigration Act, and it has and shall properly complete and retain the Immigration and Naturalization Service's Form I-9 for all its employees covered by the Immigration Act.

7.3 Patent and Copyrights: Subcontractor shall assume all liability and responsibility for all royalties, licenses, patent fees, and any other charges made in connection with the use of patented processes upon the work or in connection therewith.

7.4 Environmental Regulation: Subcontractor shall, prior to commencing the Work, identify to Contractor in writing all hazardous or toxic substances to be used in performing the Work or to be brought onto the Project by Subcontractor, and shall provide Material Safety Data Sheets ("MSDS") to Contractor for those substances. All work, labor, services or materials necessary to comply with this Section will be furnished by Subcontractor as part of this Agreement without any additional compensation. Subcontractor shall immediately notify Contractor if Subcontractor, or any of Subcontractor's partners, employees, agents, sub-tier trade partners, customers, invitees or suppliers, brings a chemical which has been listed on the Governor's list pursuant to Proposition 65 onto the Project (a "listed chemical") and shall, in addition, provide Contractor with copies of all warning labels on products Subcontractor or said persons are using. Subcontractor may be released from its obligation thereunder to post the exposure warning signs required by Proposition 65, and only that obligation, with the express written permission of Contractor.

- Subcontractor shall immediately notify Contractor of any spill, release or discharge of any listed chemical caused by or brought to the attention of Subcontractor or any of Subcontractor's partners, employees, agents, subcontractors, customers, invitees or suppliers, whether such spill, relapse or discharge is the result of an intentional act, negligence, accident or misfortune. As to any spill, release or discharge of a listed chemical which is caused by Subcontractor or any of Subcontractor's partners, employees, agents, subcontractors, customers, invitees or suppliers, whether caused intentionally, negligently or accidentally, Subcontractor shall immediately take all reasonable

and necessary actions to prevent the further spread of any spill, release or discharge of a listed chemical which is brought to the attention of Subcontractor. Subcontractor shall take immediate action to clean up said spill, release or discharge in full compliance with all applicable laws and regulations and any directions from Contractor, at Subcontractor's expense.

- Neither Subcontractor nor any of Subcontractor's partners, employees, sub-tier subcontractors or suppliers shall clean any tools, equipment, vehicles, materials or other items in such a manner as to cause a violation of Proposition 65. All residue and waste materials resulting from any such cleaning action shall be collected and gathered by Subcontractor and removed from the Project and disposed of in accordance with all applicable laws and regulations.

7.5 Safety. Subcontractor shall take all reasonable safety precautions with regard to the Work, shall comply with all safety precautions, and all safety measures initiated by Contractor, and with all safety laws, regulations, rules or ordinances of any public authority responsible for the safety of persons or property. Subcontractor acknowledges that Subcontractor, and not Contractor, is the "Controlling Employer" and therefore has the authority and responsibility for the safety of its employees and sub-tier subcontractors, as well as the safety of other subcontractors and trades in relation to the performance of Subcontractor's Work, while on the job site. In furtherance thereof, Subcontractor shall provide safe and sufficient facilities at all times. Subcontractor shall take all safety measures related to the performance of its services as required by Contractor and all applicable laws, ordinances, rules, regulations and orders of any public authority including, without limitation, the California Occupational Safety and Health Act of 1973 and all rules and regulations promulgated by the California Department of Industrial Relations pursuant to said Act. Subcontractor shall report all injuries to its employees at the Project to Contractor at Contractor office as soon as possible and no later than within eight (8) hours of the injury. Subcontractor shall have a written Illness and Injury Prevention Plan conforming to the requirements of SB 198, and shall have trained each of its employees regarding that plan and the codes of safe practices applicable to their jobs. Subcontractor shall comply with all applicable local, state, federal orders and requirements pertaining to the spread of infectious diseases, including without limitation COVID-19 and any applicable COVID-19 Exposure Prevention, Preparedness, and Response Plan. Subcontractor acknowledges that its failure to adhere to Contractor's safety policies and job rules after written notice may result in Subcontractor's removal from the Project, and termination of this Agreement. Subcontractor agrees to cooperate with all health and safety programs, rules and promulgated by Contractor, in furtherance of its duties under the Occupational Health and Safety Act. Subcontractor acknowledges that Contractor, by promulgating safety rules, notifying Subcontractor of the existence of unsafe conditions or practices, and providing safety materials and training, is not in any manner assuming Subcontractor's responsibilities to perform in a safe manner, or to provide a safe workplace for its own employees, and that Subcontractor shall remain fully liable therefore. Subcontractor further agrees that, if in the opinion of Contractor, the health and safety of any person or persons is endangered, or the effective operation of the systems put in place to ensure the health and safety of any worker on the Project is not being implemented, Contractor may take such action as it deems necessary and appropriate under the circumstances present, including, without limitation, the following:

- Contractor may require Subcontractor to remedy the condition immediately at its own expense;

- Contractor may shut the Project down in whole or in part until the condition is remedied;
- Contractor may remedy the condition at its own expense and backcharge Subcontractor for the remedial cost of such work, together with an appropriate charge for Contractor's overhead, to be determined by Contractor in its sole discretion; and/or
- Contractor may terminate the Agreement without further liability to Subcontractor, and may hold Subcontractor fully liable for any losses incurred by Contractor as a result of such termination.

ARTICLE EIGHT: WORKPLACE CONDITIONS

8.1 Subcontractor will comply with Contractor's policies concerning safety, reasonable restrictions on use and access to the construction site by unauthorized personnel and the rules and policies concerning Contractor's prohibition of solicitation or distribution on the Project, which include, without limitation, the following:

8.1.1 Contractor shall furnish to Subcontractor at the Project, unless otherwise provided a source in reasonable proximity to the Project for the provision of adequate water for the work and electrical energy for the operation of tools required for the performance of this Agreement, and sanitary toilet facilities. These facilities will be available at a location selected by Contractor, and shall be of a type determined by Contractor. If Subcontractor intends to construct a storage or working compound at the site of the work, Subcontractor shall first obtain the permission of Contractor as to the size and location of such compound, and Subcontractor shall provide, at its sole expense, temporary power and sanitary toilet facilities for such compound and shall be solely responsible for any loss of materials and equipment for such facilities resulting from any cause whatsoever.

8.1.2 Subcontractor shall provide sufficient drinking water for its employees.

8.1.3 Contractor has posted "No Trespassing" signs in conspicuous and appropriate places through the construction site. The structures being built are located on private property. Because Contractor may be held accountable for any injuries to persons or property occurring on the Project, access to the construction Project by unauthorized persons, i.e., members of the general public or off-duty employees or family members of Subcontractor's employees, is strictly prohibited. Subcontractor acknowledges the posting of Contractor's "No Trespass", "No Solicitation" and "No Distribution" signs, and acknowledges that the construction is occurring on private property under exclusive control and care of Contractor. Moreover, Subcontractor agrees to abide by these reasonable rules and procedures notwithstanding any contractual language to the contrary contained in agreements between Subcontractor and any labor organization. Subcontractors who may be working on the Project have no authority, contractual or otherwise, to permit access to the Project to any unauthorized persons, including solicitors, sales persons, off-duty employees, or officials of any labor organization. In the event unauthorized persons do enter the construction site in contravention of this statement of policies and procedures, Contractor shall regard such entry as an unlawful trespass.

8.1.4 Subcontractor shall not solicit additional work from any customer of Contractor or Owner or any homeowner or other potential interest holder in the Project.

8.1.5 Hard-hats, appropriate closed toe shoes and long pants are required for all employees of Subcontractor at all times.

8.1.6 Subcontractor's personnel shall wear shirts at all times, and such shirts shall not contain offensive language or graphics.

8.1.7 Music, obscenities and otherwise inappropriate behavior and noise will not be tolerated on or around the Project.

8.1.8 No alcoholic beverages or illegal drugs are allowed on Project at any time. Anyone found drinking or otherwise under the influence of a controlled substance shall be removed from the Project at once. Continued abuse of this requirement by Subcontractor or its employees shall be considered grounds for termination of the Agreement.

8.1.9 No animals shall be allowed on the Project.

8.1.10 All traffic laws, ordinances, rules and regulations shall be observed by Subcontractor and all other subcontractors, suppliers and lower tier subcontractors and their employees on the Project, and within the Project. The speed limit within the Project is 5 MPH. Subcontractor and its employees shall not speed or otherwise operate their automobiles in a dangerous or offensive manner within the Project.

8.1.11 Subcontractor agrees there shall be no parking of construction vehicles on finished lots, finished driveways, on sidewalks, or in garages. Contractor may also designate specific parking areas as required to allow homeowners and buyers access to models and completed homes. If a vehicle is parked on any such areas and staining to the area occurs, Subcontractor shall be responsible for the cost and repair or replacement of the damaged area.

8.1.12 Hours of work: Standard work hours shall include Monday through Friday from the earliest time permitted by law until 6:00 p.m., and Saturday from 8:00 a.m. to 5:00 p.m., unless otherwise restricted by the law.

ARTICLE NINE: COORDINATION OF WORK

9.1 In order to assure the orderly and timely prosecution of the Work and the Project, Contractor's preconstruction meeting shall be held at a time and place to be designated by Contractor. The attendance of Subcontractor's superintendent, and any major suppliers or fabricators for Subcontractor at such meeting shall be mandatory upon request by Contractor. Additionally, Subcontractor's superintendent shall attend periodic progress meetings during the course of the Work, once a week or as often as deemed necessary by Contractor's superintendent. Subcontractor acknowledges its responsibility to remain informed as to the time and location of such meetings. Contractor shall inform Subcontractor of any changes in meeting time or location at least one (1) day in advance of such

change. At the request of Contractor, Subcontractor's field personnel and/or office personnel shall also attend.

9.2 Subcontractor and its employees shall cooperate with all trades. In the event the Work includes installation of materials or equipment furnished by others, at the time Subcontractor has access to such items, it shall be the responsibility of Subcontractor to examine and accept the items so provided and to handle, store and install such items with the skill and care necessary to insure the satisfactory completion of the Work. The Subcontractor's use of such items shall be deemed to constitute acceptance thereof by Subcontractor.

9.3 Subcontractor shall be responsible for inspecting any work of any other subcontractor, subcontractor or consultant that may affect its own Work. In the event the Work is to be performed in areas to be constructed or prepared by others, at the time Subcontractor has access to such areas, it shall be the responsibility of Subcontractor to examine and accept the areas so provided. The Subcontractor's commencement of Work in those areas shall be deemed to constitute acceptance thereof by Subcontractor. Subcontractor agrees that commencing performance of such part of the Work shall be deemed to be an admission that the work which precedes such part of the Work has been done in a proper manner, and Subcontractor accepts such work as correct and fit to be accommodated into its own. No such acceptance shall be implied if the defect does not occur or it is not noticeable until after Subcontractor has completed its own work.

9.4 The Subcontractor shall notify Contractor in writing with twenty-four (24) hours of discovery of any unacceptable material, equipment or condition that would prevent commencement or prosecution of the Work in accordance with the Project Schedule. If Subcontractor installs any work over improper workmanship previously installed by other trades, Subcontractor will absorb all repair costs necessary to repair any prior work deemed inferior by Contractor.

9.5 It is Subcontractor's responsibility to leave the Work in proper condition to receive the subsequent application of work of other trades and subcontractors. Subcontractor shall be responsible for any damage that may be sustained by the Contractor or others for incorrect location of the Work or portions thereof.

ARTICLE TEN: CLEAN UP

10.1 Subcontractor agrees to clean up and remove all its debris, rubbish, hazardous or toxic discharges and surplus materials as the Work progresses and to keep its own work protected from damages by the elements and from damage likely to occur in the performance of the Work and to protect all other parts of the Project from damage likely to be caused by Subcontractor's Work. Should any such damage occur, Subcontractor agrees to immediately repair the same. Any default of Subcontractor in any such cleaning or protection from damage, may be remedied by Contractor, and the cost thereof deducted (at a rate of \$50.00 per hour for Contractor's labor from the Contract Price).

10.2 All debris from fixtures, appliances, materials and equipment handled by Subcontractor, regardless of who supplied it, shall be picked up DAILY and placed in the designated area on each lot, or in other Contractor -designated area at no cost to Contractor.

ARTICLE ELEVEN: PERSONAL GUARANTY

Concurrently with execution of this Agreement, Subcontractor shall deliver to Contractor a Guaranty of all of Subcontractor's obligations hereunder in the form of Exhibit E attached hereto and incorporated herein, duly executed on behalf of a person or entity that controls or is in common control with Subcontractor, and reasonably satisfactory to Contractor.

ARTICLE TWELVE: EQUIPMENT

Should Subcontractor or its employees use Contractor's or any other subcontractor's equipment, scaffolding or other facilities, it is understood and agreed such use shall be at Subcontractor's sole risk, and by the use thereof, Subcontractor hereby waives all claims and liability against Contractor, assumes the full risk of the operation thereof, and assumes full responsibility for any and all loss, cost, expense, damage, or injury, including reasonable attorneys' fees, arising therefrom. Security may, at Contractor's discretion, be utilized at various times during the course of construction. This, however, will not constitute acceptance of or responsibility for the security and safekeeping of Subcontractor's equipment or materials by Contractor.

ARTICLE THIRTEEN: WARRANTY

13.1 In addition to the specific guarantees required by the Scope of Work and the Specifications for the Work, Subcontractor guarantees all the work to be performed and all the materials to be furnished under this Agreement against patent defects in material or workmanship for a period of one (1) year from the close of escrow on such property resulting from failure in material or workmanship which may occur during said one year period at its own expense and without cost to Contractor. Subcontractor acknowledges and agrees that this warranty obligation is not intended to be covered by the OCIP Policy, if applicable, discussed in Article 15 below, and further agrees to make no claim for insurance coverage of this warranty obligation under the OCIP. In addition to complying with any other requirements of this Agreement, the Work of Subcontractor shall comply with all functionality standards specified in California Civil Code Sections 896 et seq. in force at the time of completion of the Work, and as may be amended from time to time, and any "fit and finish" items set forth in Civil Code Section 900. With regard to any claims arising under Civil Code Sections 896 et seq., Subcontractor shall comply with any and all "pre-litigation dispute resolution procedures" adopted by Contractor, and provide Contractor with reasonable cooperation in responding to and/or defending against such claims. Subcontractor shall provide Contractor with warranties for all "manufactured products" installed in each home constructed, and shall supply maintenance recommendations and "useful life" information to Contractor in compliance with Civil Code Section 896(g)(3).

13.2 If additional work is required by other trades following completion of work, Subcontractor shall immediately notify the Contractor of the necessary follow-up trades.

13.3 In fulfillment of Subcontractor's obligations above if any of the Work is found to be not in accordance with the requirements of this Agreement, Subcontractor shall, at Contractor's option, repair or replace any defective or nonconforming materials, equipment, or work at Subcontractor's sole expense immediately upon notification thereof, to the satisfaction of Contractor. The cost to repair any adjacent materials, equipment, or work disturbed or damaged during or as a result of any such

corrective work, shall also be paid by Subcontractor. All corrective materials, equipment, and work is guaranteed in accordance with this Article. If Subcontractor fails, neglects, or refuses, within twenty four (24) hours after notice is made by Contractor, to correct any defective materials, equipment, or work, Contractor may, without further notice or demand, cause such defective materials, equipment, or work to be repaired or replaced by others. Subcontractor shall immediately reimburse Contractor for the cost of such repair or replacement. If Subcontractor fails to immediately reimburse Contractor, Contractor may deduct the repair costs from payment due to Subcontractor for this Agreement, or any other contract with Subcontractor. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Subcontractor might have under this Agreement.

13.4 It is the policy of Contractor to provide each homeowner with a “Walk-through” of his or her home a few days prior to close of escrow, and all items noted as needing correction during the Orientation shall be corrected as soon as possible, and before each homeowner closes escrow if possible. Therefore, when Subcontractor is notified by Contractor of the need to perform warranty work relating to “Walk-through” items, Subcontractor shall immediately complete all such “Walk-through” correction items. Such corrective work must be fully completed within three (3) days of receipt of notice of correction. With regard to regular (non-Orientation) warranty items, Subcontractor shall complete such corrective work within five (5) working days from receipt of the original notice from Contractor. A 7-day-a-week and 24 hour on-call emergency service must be provided by roofing, plumbing, electrical and HVAC subcontractors. Emergency service requests will require IMMEDIATE attention by the Subcontractor. Subcontractor shall respond telephonically within one (1) hour to any emergency service request and shall send service personnel to the residence within two (2) hours after receipt of an emergency service request call. In the event of an emergency, Subcontractor agrees to respond and repair or replace any work or materials within 24 hours of receiving notice. Should Subcontractor fail to respond to such emergency, or fail to complete such repairs within the 24 hour period, Subcontractor acknowledges that its actions will cause damage to the reputation of Contractor, and may damage the relationship of Contractor with its homeowners. Such damages would be extremely difficult and impractical to precisely compute. The parties therefore agree that as liquidated damages, and not as a penalty, Subcontractor will pay Contractor the sum of \$250.00 for every emergency call to which it fails to respond or complete such work within the 24 hour time period. Subcontractor further agrees that the amount of such liquidated damages may be backcharged against any then open trade contract between Contractor and Subcontractor.

13.5 Subcontractor agrees to and shall abide by Contractor’s Homeowner Warranty and Customer Service policies and procedures, as the same may be modified or amended by Contractor, during Subcontractor’s performance of the Work and when performing any warranty work pursuant to this Agreement. Subcontractor shall be required to give the homeowner notification that the homeowner’s warranty service call will be within a four (4) hour period in either the morning or the afternoon. Should Subcontractor agree to make warranty repairs to a specific home, and fail to keep its appointment with the homeowner, without giving at least twenty-four (24) hours’ notice of cancellation to the homeowner, or does not keep such appointment within the set four (4) hour period, Subcontractor acknowledges that its actions will cause damage to the reputation of Contractor, and may damage the relationship of Contractor with its homeowners. Such damages would be extremely difficult and impractical to precisely compute. The parties therefore agree that as liquidated damages, and not as a penalty, Subcontractor will pay Contractor the sum of \$250.00 for every appointment it

misses or is over four (4) hours late in keeping for warranty service calls. Subcontractor further agrees that the amount of such liquidated damages may be backcharged against any then open trade contract between Contractor and Subcontractor.

13.6 Subcontractor shall have representatives (service persons) responsible for warranty work. These persons shall be professionally attired with proper identification as to the company they represent. They must be able to communicate in English with homeowners. They must be able to work in an environment that may be stressful due to adversarial situations. The service persons must be able to remain focused and work politely, professionally, effectively, efficiently and cheerfully under these conditions.

13.7 If additional work is required by other trades following completion of warranty work, Subcontractor shall immediately notify the Contractor's Customer Service Department of the necessary follow-up trades.

13.8 Subcontractor will, upon reasonable request of the Contractor and at no charge to Contractor, periodically inspect the models and will provide parts to repair any damages.

ARTICLE 14: INDEMNITY

14.1 Civil Code Section 2782(c) Indemnity Provision.

14.1.1 For residential construction (as the term "residential construction" is used in California Civil Code Section 895, et seq.), Subcontractor shall, to the fullest extent permitted by law and to the extent not covered by the OCIP/Wrap-up Insurance, indemnify, defend and hold harmless Contractor, Owner, and their parent, subsidiary and affiliated entities, and all such parties' partners, shareholders, members, officers, directors, agents, representatives and employees and Owner's lender(s) (collectively, "Indemnitees"), and each and all of them, from and against and any and all losses, damages, liabilities, demands, expenses, costs, debts, causes of action, suits, penalties, fines, judgments, claims and liens, including without limitation, attorneys' fees, consulting costs and court costs, including, without limitation, the cost of appellate proceedings and disbursements arising out of construction defects ("Construction Defect Claims") except to the extent the Construction Defect Claims arise out of, pertain to, or relate to the negligence of Contractor or Contractor's other agents, other servants or other independent contractors who are directly responsible to Contractor or for defects in design furnished by those persons, or to the extent the Construction Defect Claims do not arise out of, pertain to, or relate to the scope of Subcontractor's Work under this Agreement.

14.1.2 Duty to Defend For Construction Defect Claims. To the extent one or more claims based upon defects in, or inferiority of, the materials or workmanship of the Work ("Construction Defect Claim") are asserted against the Indemnitees giving rise to a duty to defend, Subcontractor will satisfy its defense obligation in accordance with California Civil Code § 2782(c) – (e). Within ninety (90) days after written notice of the Construction Defect Claim is provided to Subcontractor, Subcontractor must provide written notice to the Indemnitees that it will satisfy its defense obligation under this paragraph. Subcontractor must choose to satisfy its defense obligation with regard to a Construction Defect Claim by electing either of the following choices:

A. Subcontractor agrees to defend and control the defense of any Construction Defect Claim or portion thereof to which the defense obligation applies above subject to the rules and laws concerning conflicts of interest. Subcontractor shall engage and retain counsel of its choice to defend such claim. Said defense by Subcontractor shall be a full and complete defense of the

Indemnitees to the extent alleged to be caused by Subcontractor, including any vicarious liability claims against the Indemnitees resulting from the Work. Subcontractor's defense obligation shall include the engagement of professionals, experts and/or consultants reasonably necessary to the provision of said full and complete defense of the Indemnitees. Accordingly, Subcontractor shall be solely responsible for all defense costs and expenses related to Subcontractor's defense of the Indemnitees including, without limitation, all attorneys' fees, court costs and all other professional, expert and/or consultants' fees and costs. In the event of a material, current, actual, or unwaivable conflict of interest, the Indemnitees do not waive, release or relinquish their right to the appointment of separate counsel; or

B. The Indemnitees shall be entitled to select the attorney and experts engaged to defend the Indemnitees against the Construction Defect Claim and to control and make all decisions, in their sole and absolute discretion, related to said claim. Subcontractor agrees to pay, on an ongoing basis during the pendency of the claim, a reasonable allocated share of the fees and costs incurred by the Indemnitees in defending said claim. The Indemnitees shall, in their sole discretion, determine Subcontractor's allocated share. The Indemnitees shall determine said allocation after careful consideration of the nature of the allegations, potential liability exposure, the Work, and the number of parties with allegations related to their scope of work. The Indemnitees and Subcontractor agree that share allocation at the commencement of the Construction Defect Claim may be difficult to calculate and that the methodology identified herein may be altered as necessary to achieve an allocation determination that is reasonable. Subcontractor shall pay the Indemnitees its allocated share within thirty (30) days of receipt of an invoice from the Indemnitees. Indemnitees agree to reimburse Subcontractor that portion of Subcontractor's allocated share that is not attributable to or arise out of the Work by or for Subcontractor. Such reimbursement obligation shall arise upon entry of judgment, issuance of a binding arbitration award or execution of a final settlement agreement that allocates the Indemnitees' and Subcontractor's proportionate liability ("Final Determination").

C. Consequences for Breach of Defense Obligation.

(i) If Subcontractor fails to timely and adequately perform its defense obligations herein, Subcontractor waives any and all rights to challenge, contest or dispute the amount or reasonableness of any settlement of the claim reached by the Indemnitees or any other Contractor and the claimants. Subcontractor shall be bound by the amount of any settlement of the claim reached by the Indemnitees or any other Contractor and the claimants. The binding effect of this provision shall in no way diminish or reduce Subcontractor's right to defend itself or assert all available defenses relevant to its liability in any subsequent trial.

(ii) Upon Subcontractor's failure to timely and adequately perform its defense obligations herein, the Indemnitees may, at their sole option, elect in writing either to: (1) treat this Agreement as continuing and enforce the same by specific performance; (2) seek compensatory and consequential damages, reasonable attorney's fees and costs incurred to recover said damages and interest on defense and indemnity costs from the date incurred; or (3) increase Subcontractor's allocated share by fifty percent (50%), not as a penalty, but as an agreed, reasonable liquidated damage. The Indemnitees and Subcontractor agree that at the time this Agreement is entered into actual damages are difficult to calculate and that an increase in Subcontractor's allocated share by fifty percent (50%) shall be a reasonable approximation of actual damages incurred, but without the expense or litigation. In the event of election by the Indemnitees to seek liquidated damages set forth above, ten (10) days written notice to Subcontractor shall be given. The liquidated damages identified above shall be paid to the Indemnitees upon demand. Such liquidated damage will not be subject to reallocation. The Indemnitees may sue to collect such liquidated damages from Subcontractor.

14.2 Liabilities Other Than Civil Code Section 2782.

14.2.1 In the event Indemnitees shall have a claim made against them for, or become involved in litigation or arbitration because of, claims for personal injuries, death, property damage, liens, stop notices or charges of any kind against the site of the Project; Subcontractor's failure to fulfill its obligations under the Agreement; claims under workers compensation acts, California Labor Code section 218.7, or any other employee benefit acts with respect to Subcontractor's employees; violation of any federal, state or local law, regulation or code; infringements of patents, or violations of patent rights; or any other type of claims, damages, injury or loss arising out of or related to the activities of or the work performed (including any addenda to this Agreement, "extras" or claimed written or verbal change orders to this Agreement) by Subcontractor, its agents, employees, servants, suppliers or subcontractors (the "Liability"), it is the express intent of the parties to this Agreement that Subcontractor shall indemnify, defend and hold the Indemnitees harmless, to the maximum extent permitted by law, against any and all such claims, damages, injury, loss, liability and expense, including but not limited to, attorneys' fees, litigation costs and expert fees incurred as a result thereof. It is expressly agreed and understood by Subcontractor and Contractor that the obligations imposed upon Subcontractor by this provision are unequivocally binding, valid and enforceable and are intended to apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Subcontractor, and are enforceable even if it is claimed or established that Contractor or Owner was passively negligent, strictly liable in tort or otherwise responsible for any such claims, damages, injury, loss, liability or expense. Notwithstanding the foregoing, (i) Subcontractor shall not be obligated to indemnify the Indemnitees to the extent such Liability is caused by the negligence or willful misconduct of the Indemnitees; (ii) Subcontractor shall only be obligated to indemnify the Indemnified parties to the extent the Liability is determined by a court or forum of competent jurisdiction to arise from the negligence, intentional acts or willful misconduct of Subcontractor; and (iii) nothing herein shall be construed to require Subcontractor to indemnify the Indemnitees for Liability arising from the sole negligence or willful misconduct of the Indemnitees. Payment to Subcontractor by Contractor shall not be a condition precedent to enforcing the Indemnitees' rights to indemnification. The indemnity set forth in this section shall survive the expiration or termination of this Agreement until such time as all actions against Contractor or Owner on account of any matter covered by this indemnity are barred by the applicable statute of limitations.

14.2.2 Duty to Defend For Non-Construction Defect Claims. To the fullest extent permitted by law, Subcontractor shall defend the Indemnitees at Subcontractor's sole cost and expense and with legal counsel approved by Contractor, which approval shall not be unreasonably withheld. Subcontractor's duty to defend exists and includes any other claims or demands alleged by the party asserting the claim, including any allegations that the Indemnitees were negligent or otherwise responsible for the claim. Subcontractor's duty to defend the Indemnitees is entirely separate from, independent and free of Subcontractor's duty to indemnify the Indemnitees, and includes, without limitation, defense of Contractor and Owner regardless of the theory of liability asserted against Contractor or Owner, and applies whether the issue of Subcontractor's negligence, breach of Agreement or other fault or obligation has been determined and whether Contractor has paid any sums, or incurred any detriment, arising out of or resulting directly or indirectly from Subcontractor's performance of the Work. The prevailing party in any action to enforce the indemnity provisions herein shall be entitled to recover its reasonable attorneys' fees and costs.

ARTICLE 15: INSURANCE

15.1 Casualty Insurance.

The Subcontractor shall, at its sole cost and expense, procure and maintain insurance on all of its operations and the Work, with insurers acceptable to Contractor, as follows:

15.1.1 Workers' Compensation and Employer's Liability Insurance. Subcontractor shall procure, maintain and keep in effect continuously during the life of this Agreement the following Worker's Compensation insurance coverages:

- 1) Workers' Compensation – Statutory Limits
- 2) Employer's Liability
 - a. Bodily Injury by accident: \$1,000,000 each accident;
 - b. Bodily Injury by disease: \$1,000,000 policy limit;
 - c. Bodily Injury by disease: \$1,000,000 each employee;
- 3) Provide and attach to the Certificate of Insurance a Waiver of Subrogation in favor of the Indemnitied Parties, all Eligible Parties if Section 15.1.6 is applicable, and any other party identified by Contractor in writing.
- 4) Provide and attach proof that Subcontractor's worker's compensation Experience Modification Rate (EMR) as of the date of the Agreement is less than 1. Subcontractor shall promptly notify Contractor in writing whenever Subcontractor's EMR is 1 or higher.

15.1.2 Automobile Liability Insurance. Subcontractor shall procure, maintain and keep in effect continuously during the life of this Agreement, the following commercial automobile liability insurance coverages

- 1) Auto Liability limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability insurance including, but not limited to, owned autos, hired or non-owned autos. Personal Auto Policies are NOT acceptable.
- 2) Provide and attach to the Certificate of Insurance an Additional Insured endorsement in favor of the Indemnitied Parties, all Eligible Parties if Section 15.1.6 is applicable, and any other party identified by Contractor in writing.

15.1.3 Owner Controlled Insurance Program.

The Owner has purchased a "Wrap-Up" insurance program (Owner Controlled Insurance Policy) for the Project. Subcontractor agrees that it shall comply with all of the administrative, insurance, and other requirements set forth in Exhibit D – OCIP Addendum. Contractor and Owner reserve the right, in their sole discretion, to include or exclude Subcontractor from the OCIP, notwithstanding Subcontractor's apparent eligibility for same. If Subcontractor is excluded from the OCIP or does not otherwise enroll in the OCIP or comply with the requirements of Exhibit D – OCIP Addendum, Subcontractor shall, at its sole cost and expense, procure and maintain the commercial general liability insurance set forth in Section 15.1.4. If Subcontractor is duly enrolled in the OCIP and otherwise in compliance with the requirements of Exhibit D – OCIP Addendum, Subcontractor is excused from satisfying the requirements of Section 15.1.4.

15.1.4 Commercial General Liability Insurance.

Subcontractor shall procure, maintain and keep in effect continuously during the life of this Agreement, commercial general liability insurance, written on an occurrence policy form (“modified occurrence” and “claims-made” are not acceptable), including premises-operations (including explosion, collapse and underground coverage) and products-completed operations coverage, with limits of not less than \$1,000,000 bodily injury and property damage per occurrence limit, \$2,000,000 general aggregate limit, \$1,000,000 personal injury and advertising limit, and \$2,000,000 products-completed operations aggregate limit (with a “per project” endorsement specifying the Project), and with deductibles or self-insured retentions acceptable to Contractor. All liability policies shall provide, without limitation, severability of interests (full separation of insureds with no insured vs. insured exclusions or limitations), contractual liability coverage (including coverage to the maximum extent possible for the indemnification contained in this Agreement), broad form property damage coverage (including completed operations) and a duty to defend in addition to (without reducing) the limits of the policy(ies). The required limits may be provided by a combination of primary and umbrella and/or excess liability policies, all written on an occurrence policy form (“modified occurrence” and “claims made” forms are not acceptable), with umbrella/excess coverage at least as broad as the primary general liability insurance. Subcontractor agrees to maintain continuous coverage for the insurance required in this subparagraph in effect during the term of this Agreement and at least ten (10) years beyond the completion or termination of the Work hereunder or completion of the Project, whichever is later. Subcontractor shall provide and attach to the Certificate of Insurance an Additional Insured endorsement in favor of the Indemnitaries and any other party identified by Contractor in writing.

15.1.5 Professional Liability Insurance. If Subcontractor has design or engineering responsibility in the execution of its Subcontract obligations, Subcontractor shall provide Professional Liability coverage with limited contractual liability coverage in favor of Contractor and a deductible no greater than \$50,000 per claim. Any deductible or self-insured retention (SIR) must be clearly identified on the Certificate of Insurance and is subject to Contractor’s approval. This insurance shall be maintained for not less than the duration of the project and ten (10) years following completion of construction. Retroactive date of such policy must be on or before the date Subcontractor (and its consultants/subcontractors) began providing professional services for the project. Limits of liability shall be not less than \$2,000,000 per claim.

15.1.6 Other Requirements:

1) All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation, non-renewal or material reduction in coverage. Ten (10) days notice of cancellation for non-payment only is acceptable.

2) All policies must be written by insurance companies whose rating in the most recent Best’s Rating Guide, is not less than A: 8 or better. All coverage forms must be acceptable to Contractor. If requested by Contractor, Subcontractor shall provide certified copies of all such policies to Contractor within 30 days of such request.

3) Certificates of Insurance with the required endorsements evidencing the required coverages must be delivered to the Contractor prior to commencement of any work under this Agreement.

4) Contractor reserves the right, in its sole discretion, to require higher limits of liability coverage if, in Contractor’s opinion, operations by or on behalf of Subcontractor create higher

than normal hazards, and to require Subcontractor to name additional parties in interest to be Additional Insureds.

5) In the event that rental of equipment is undertaken to complete and/or perform the work, Subcontractor agrees that it shall be solely responsible for such rental equipment and costs relating of insurance for such equipment rented. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.

6) Subcontractor shall require each sub-subcontractor and supplier to purchase and maintain insurance coverage as provided in this Article.

7) In the event that materials or any other type of personal property (“personal property”) are acquired for the Project or delivered to the Project site, Subcontractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.

8) NO ENDORSEMENT LIMITING OR EXCLUDING A REQUIRED COVERAGE IS PERMITTED.

9) The requirement for carrying the insurance set forth in this Article shall not derogate in any way from the provisions for indemnification set forth in this Agreement.

10) Subcontractor hereby waives all rights of recovery, whether under subrogation or otherwise, because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, against Owner, Contractor, OCIP Administrator, its or their officers, agents, or employees, and any other Contractor, Subcontractor or other individual or entity performing work or rendering services on behalf of Contractor in connection with the planning, development and construction of the Project. Subcontractor shall also require that all insurance policies related to the Work secured by Subcontractor or its sub-tier subcontractors to include clauses providing that each insurance underwriter shall waive all of its rights of recovery by subrogation, or otherwise, against Subcontractor and Contractor together with the same parties referenced immediately above in this Section. Subcontractor shall require similar written express waivers and insurance clauses from each of its sub-subcontractors. This provision shall apply to each Subcontractor performing work or rendering services on behalf of Contractor in connection with the planning, development and construction of the Project irrespective of whether or not it is Eligible in the OCIP. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

11) Nothing contained in this Article or the OCIP Insurance Policies shall relieve Subcontractor of its obligation to exercise due care in the performance of its duties in connection with the Work and to complete the Work in strict compliance with the Contract Documents, and in particular, to perform all warranty obligations. Subcontractor acknowledges and agrees that claims arising out customer service calls during the first year of occupancy or as a result of Subcontractor’s failure to complete its Work under the Agreement are not covered by the OCIP policy.

ARTICLE 16: INTENTIONALLY OMITTED

ARTICLE 17: PROTECTION OF WORK AND MATERIALS

17.1 The Subcontractor shall adequately secure and protect the Work and the materials and equipment to be incorporated into the Work, whether in storage on-site, in storage off-site or in transit, whether under the care, custody or control of the Contractor, Subcontractors, sub-subcontractors or materialmen, and Subcontractor assumes full responsibility for the safety, protection and condition thereof, including without limitation theft or casualty loss, until final such Work and materials are fully incorporated into the Project and accepted by Owner and Contractor. The Subcontractor further agrees to provide the protection necessary to protect the work and workmen of Contractor, Owner, suppliers, materialmen and other subcontractors from Subcontractor's operations.

17.2 The Subcontractor recognizes that a reasonable amount of damage to the Work and work of others will occur during the course of construction. When the damaging party cannot be identified, Contractor shall allocate the costs to repair the damage among the likely parties. The Contractor's allocation shall be final and binding on Subcontractor, so long as the allocation is reasonable and made in good faith.

ARTICLE 18: RECOURSE BY CONTRACTOR

18.1 The Contractor may demand adequate written assurance from Subcontractor of its ability to perform under this Agreement. The Subcontractor's failure to provide that assurance within fifteen (15) days is a default under section 18.2 of this Agreement.

18.2 If Subcontractor refuses or neglects to provide a sufficient number of properly skilled workers and proper materials to maintain the Project Schedule, or fails to properly and diligently prosecute the Work, or fails to make prompt payment to its workers, subcontractors, materialmen or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to section 18.1, or is otherwise guilty of a material breach of a provision of this Agreement, such shall constitute a default by Subcontractor. If Subcontractor fails to commence and satisfactorily continue correction of a default within twenty-four (24) hours after Subcontractor's receipt of notice of default, then Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

(a) Provide such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for completion of the Work or any part thereof, which Subcontractor has failed to timely complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of such cost, including profit, expenses and attorneys' fees incurred as a result thereof;

(b) Contract with one or more additional subcontractors to perform such part of the Work as Contractor shall determine will provide the most expeditious completion of the Work and charge the cost thereof to Subcontractor;

(c) Withhold payment of any amount due Subcontractor pending corrective action to the extent required by Contractor;

(d) Terminate Subcontractor's right, in whole or in part, to perform the Work and use any materials, implements, equipment, appliances, facilities or tools furnished or belonging to

Subcontractor to complete the Work, without any additional compensation to Subcontractor for such use;

(e) Require Subcontractor to assign and transfer to Contractor, in whole or in part, Subcontractor's subcontracts, orders and commitments relating to the Work. The Subcontractor shall execute and deliver all documents and take all action required to transfer Subcontractor's rights in subcontracts, orders and commitments relating to the Work to Contractor;

(f) Require Subcontractor to cancel all, or part, of Subcontractor's subcontracts, orders and commitments relating to the Work;

(g) Require Subcontractor to sell at prices approved by Contractor such materials, equipment, tools, supplies, and facilities obtained pursuant to this Agreement, as Contractor shall direct, the proceeds of such sale shall be paid to Contractor or credited to Contractor, as Contractor shall direct;

(h) Withhold payments to Subcontractor until the Work has been completed. At that time, all costs, including expenses and attorneys' fees, incurred by Contractor to complete the Work, plus fifteen percent (15%) mark-up for overhead and profit shall be deducted from the Contract Price. The Subcontractor shall be liable for payment of any amount which exceeds the unpaid balance of the Contract Price.

18.3 In the event of an emergency affecting the safety of persons or property, Contractor may proceed with the remedies set forth in 18.2, without written notice to Subcontractor.

18.4 The Contractor may at any time and for any reason, with or without cause, terminate this Agreement. Such termination shall be by written notice to Subcontractor.

(a) Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work and placing of orders for materials, equipment, facilities and supplies relating to the Work. If requested by Contractor, Subcontractor shall make every reasonable effort to procure cancellation of all existing subcontracts, orders and commitments upon terms satisfactory to Contractor or, at the option of Contractor, Subcontractor shall give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. The Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the Work already in progress and to protect materials, equipment, facilities and supplies at the Project or in transit thereto.

(b) In the event of termination without cause, the Subcontractor shall be entitled to payment only as follows: (i) That portion of the Work actually completed in conformity with this Agreement. There shall be deducted from such sums as are provided for payment of Subcontractor above, the amount of any payments made to the Subcontractor prior to the date of termination of this Agreement. 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. In the event this Agreement is terminated for cause, Subcontractor shall be entitled to further payment only if and to the extent remaining after Contractor's exercise of all remedies herein.

18.5 The Contractor may withhold or nullify on account of subsequently discovered evidence, the whole or part of any payment to Subcontractor to the extent necessary to protect Contractor from loss, including costs, expenses and attorneys' fees on account of: (1) failure of Subcontractor to remedy defective work; (2) claim or reasonable evidence indicating a probable claim arising out of Subcontractor's acts or omissions; (3) failure of Subcontractor to make prompt payments to its subcontractors or for material, labor or fringe benefits; (4) reasonable doubt that this Agreement can be

completed for the balance of the unpaid Contract Price; (5) damage to Contractor, Owner, the Project or other subcontractor arising out of Subcontractor's acts or omissions; (6) penalties, fines, taxes or assessments against Contractor, Owner, the Project or Subcontractor resulting from Subcontractor's failure to comply with any state, federal or local law, ordinance or regulations; (7) claims Contractor may have against Subcontractor arising out of other projects; or (8) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters have been rectified, the amounts due to Subcontractor shall be paid or credited to Subcontractor.

18.6 The waiver of any neglect, failure or default on the part of Subcontractor by Contractor shall not constitute the waiver of any additional or continued neglect, failure or default by Subcontractor.

18.7 Upon the appointment of a receiver for Subcontractor, or upon Subcontractor making an assignment for the benefit of creditors, or upon Subcontractor seeking protection under the Bankruptcy Code, or upon Subcontractor committing any other act of insolvency, Contractor may, absent any applicable legal limitation, terminate this Agreement upon forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, its trustee, or its surety: (1) promptly cures all defaults; (2) provides adequate assurance of future performance of this Agreement; (3) compensates Contractor for actual pecuniary loss resulting from all defaults; and (4) assumes the obligations of Subcontractor within the statutory time limits.

18.8 If Subcontractor is not performing in accordance with the Project Schedule at the time of entering an order for relief, or at any subsequent time, while Contractor is awaiting the decision of Subcontractor or its trustee to reject or accept this Agreement and provide adequate assurance of its ability to perform hereunder, Contractor may avail itself of such remedies as are reasonably necessary to maintain the Project Schedule. The Contractor may offset against any amounts due or to become due to Subcontractor, all costs incurred in pursuing any of the remedies provided herein, including reasonable overhead, profit, expenses and attorneys' fees incurred as a result of Subcontractor's non-performance. The Subcontractor shall be liable for the payment of any amount which such costs, overhead, profit, expenses and attorney's fees exceed the unpaid balance of the Contract Price.

ARTICLE 19: ASSIGNMENT OF CONTRACT

19.1 Subcontractor shall not, without written consent of Contractor, assign, transfer or sublet the Work, in whole or in part, nor assign any payment hereunder. The assignment, transferring or subletting of the Work, in whole or in part, shall not relieve Subcontractor of its responsibilities under this Agreement.

19.2 If Subcontractor subcontracts any of the Work, such subcontract will incorporate by reference all provisions of this Agreement and shall bind the sub-subcontractor to all of the terms and conditions of this Agreement.

19.3 Contractor shall have the absolute right to assign all or any portion of its right under this Agreement or in the Project to any party including Owner's lender(s) without the consent of Subcontractor. Subcontractor agrees to consent in writing to any assignment by Contractor of this Agreement to Contractor's lender(s), if any. In connection with the financing obtained by Owner,

Subcontractor shall execute and deliver any and all instruments required by Contractor, Owner or its lender(s) including, but not limited to, lender(s) form of assignment/consent.

ARTICLE 20: BOND REQUIREMENTS

Subcontractor shall furnish, upon written request of Contractor, a corporate surety bond written by a surety company authorized to conduct business in the State of California, to guarantee the faithful performance of this Agreement and the payment for all Work and materials furnished under this Agreement. The bond shall be in an amount equal to the Subcontract Price. Contractor shall pay for such surety bond provided that the premium thereof does not exceed the then existing rate commonly charged by corporations conducting a surety business in the State of California. In the event that Contractor notifies Subcontractor prior to the submission of Subcontractor's bid that a surety bond will be required, Subcontractor shall include the premium of such bond in the price quoted and Subcontractor shall pay for the bond itself. In the event that the Contractor reasonably believes that Subcontractor has exposed Contractor to potential liability under California Labor Code section 218.7, Subcontractor shall pay for the bond itself. Contractor shall have the right to demand such surety bond at any time during the progress of the job, and in the event of the failure of Subcontractor to furnish surety bond within five (5) business days after written demand by Contractor, Subcontractor will be deemed to be in default of this Agreement.

ARTICLE 21: USE OF CONTRACTOR'S OR OWNER'S EQUIPMENT

The use of any of Contractor's or Owner's equipment or service, including, but not limited to, rigging, blocking, hoist, ladders, tools, or scaffolding by Subcontractor, given, loaned or rented to Subcontractor by Contractor or Owner shall be upon the distinct understanding that Subcontractor uses such equipment or service, including temporary power and other similar services, at his own risk and takes the same "as is", and Subcontractor assumes all responsibility for and agrees to indemnify, defend, protect and hold Contractor and Owner harmless in accordance with the terms of the Agreement from the use thereof, whether such damage results to Subcontractor or its own employees or property or to other persons or other employees or properties of other persons. Nothing herein contained shall be deemed to permit any such use by Subcontractor without the prior written consent of Contractor.

ARTICLE 22: INDEPENDENT CONTRACTOR

22.1 The Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Contract Price: (1) comply with laws, codes, orders, citations, rules, regulations, ordinances, standards and statutes of all governing bodies having jurisdiction over the Work; (2) obtain all necessary permits and licenses to deliver its materials and perform the Work; and (3) pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, federal taxes, state taxes, county taxes, municipality 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. At Contractor's request, Subcontractor shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

22.2 The Subcontractor acknowledges that Contractor and Owner rely on Subcontractor's special expert knowledge of the laws, codes, orders, citations, rules, regulations, ordinances, standards and statutes that apply to the Work. Contractor and Owner rely on the special expert knowledge of Subcontractor regarding integrating and coordinating the Work with the scope and work of other trades and Subcontractors.

ARTICLE 23: LINES, GRADES AND MEASUREMENTS

Subcontractor shall verify the accuracy of all lines, levels and measurements and their relation to benchmarks, property lines, reference lines and dimensions which are governed by conditions already established, as they relate to the Work of the Subcontractor. No variation from specified lines or grades or dimensions shall be made except on written authority of Contractor.

ARTICLE 24: SHOP AND DESIGN DRAWINGS

24.1 If Subcontractor makes changes in design, including dimensional changes, either through shop drawings or actual field work, it shall accept all responsibility for structural and functional adequacy and obtaining approval of such changes by Owner and Architect. In addition, Subcontractor shall be responsible for the costs of additional work, modifying and repairing work by other trades or Contractor, resulting from such changes.

24.2 If Subcontractor is responsible for design drawings, it shall accept all responsibility for structural, functional, and design adequacy of such drawings and obtaining approval of Owner, Architect and governing authorities of such drawings. Any structural or functional failure or inadequacy that may result from such design drawings shall be remedied by the Subcontractor. In addition, the Subcontractor shall be responsible for the costs of additional work, modifying or repairing work by other trades or Contractor, architectural and engineering changes, loss of rent, and any other damages resulting from such structural or functional failure or inadequacy.

24.3 If this Subcontract is based on preliminary, outline, or otherwise unfinished Plans and Specifications, Subcontractor accepts responsibility for cooperating and coordinating with Owner, Contractor, Architect and other trades in developing final Plans and Specifications so as not to impose additional work or cost on other trades or Contractor or to cause an increase in the Contract Price.

24.4 The Subcontractor's obligations include taking field measurements for the Work and approval of shop drawings by Owner and Architect.

24.5 The Subcontractor shall not be relieved from correcting Work reflected in error on its shop drawings, not conforming to field requirements, or not complying with the terms of this Agreement. It is not incumbent upon Contractor to discover mistakes, errors, omissions or deviations in the quality, quantity or type of materials used by Subcontractor or in the shop drawings, schedules and reports submitted by Subcontractor, and Contractor's or Owner's approval of such shall not relieve Subcontractor from responsibility for unauthorized changes, mistakes, errors, omissions or deviations of any sort.

ARTICLE 28: SEVERABILITY

In the event that any provision or any part of a provision of this Agreement shall be determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions of this Agreement which shall remain in full force and effect as if the unenforceable provision were deleted.

ARTICLE 29: CAPTIONS

The titles of any terms or conditions of this Agreement are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof.

ARTICLE 30: NEGOTIATED TERMS

The Contractor and Subcontractor acknowledge that the terms and conditions of this Agreement are the result of negotiations between Contractor and Subcontractor. Any conflict, inconsistency or ambiguity in the terms or conditions of this Agreement shall not be construed against Contractor or Subcontractor.

ARTICLE 31: ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between Contractor and Subcontractor relative to the Project. No oral representations or other agreements, including without limitation credit applications, proposals, requests for proposals, letters of intent, memorandums of understandings, and terms and conditions, have been made by Contractor and Subcontractor except as stated in this Agreement. This Agreement may not be changed in any way except as herein provided, and no term or condition of the Agreement may be waived by Contractor except in writing signed by Contractor's duly authorized officer or representative.

ARTICLE 32: DISPUTES

32.1 Work Disputes: During all disputes, actions, claims or other matters arising out of or relating to this Agreement or the breach thereof, Subcontractor shall carry on its duties hereunder, and Contractor agrees to pay Subcontractor all amounts not in dispute pursuant to the provisions of this Agreement.

32.2 Dispute Negotiation: If a claim or other dispute arises out of or relates to this Agreement or its breach, the parties shall within five (5) business days of receipt of written notice of such claim or dispute, endeavor in good faith to settle such claim or other dispute through direct face to face discussions among and between high level representatives of Contractor and Subcontractor with authority to resolve the Claim or dispute (hereinafter referred to as "Direct Discussions"). If the claim or dispute cannot be settled through Direct Discussions, as a condition precedent to Arbitration, the parties shall then proceed to non-binding Mediation, pursuant to the Construction Industry Mediation

Rules of the American Arbitration Association, or the Mediation Rules of Judicial Arbitration & Mediation Services (hereinafter 'JAMS'), then in effect.

32.3 Mediation: For any claims or disputes solely between Contractor and Subcontractor arising out of or relating to this Agreement, or the breach thereof, Contractor and Subcontractor hereby agree that as a prerequisite to submitting the claim or dispute to consensual binding arbitration, to submit such dispute or claim first to non-binding mediation (unless the parties agree otherwise in writing) administered by a mediator mutually agreed to by both parties and pursuant to the Construction Industry Mediation Rules of the American Arbitration Association, or the Mediation Rules of JAMS, then in effect. The mediation process shall continue until (i) the dispute is resolved, or (ii) the mediator makes a finding that there is no possibility of settlement through mediation, or (iii) either party chooses not to continue further with the mediation process.

32.4 Binding Arbitration: If either party to this Agreement commences a lawsuit or is a party to an arbitration arising under or relating to this Agreement and/or Project, all of the issues in such action, whether of fact or law, shall be arbitrated pursuant to the procedures in effect for the then pending arbitration or, if no arbitration is pending, the Construction Industry Arbitration Rules of the American Arbitration Association, then in effect, or the rules of JAMS, as the parties may agree. The decision of the Arbitrator shall be binding except as to those rights of appeal which are or may be reserved to the parties by operation of law.

32.5 General Provisions Regarding Arbitration:

30.5.1 This section shall inure to the benefit of, and be enforceable by, seller's subcontractors, agents, vendors, suppliers, design professionals, warranty administrator, insurers and any other person whom buyer contends is responsible for any alleged defect in or to the property or an improvement thereto.

30.5.2 The Arbitrator shall have sole authority to allocate the arbitration fees and costs in the Arbitrator's Final award; provided, however, this provision does not modify any other provision of this Agreement requiring indemnification or establishing a different allocation of costs between Contractor and Subcontractor.

32.5.3 The written decision of the Arbitrator shall be final and binding. Subcontractor and Contractor expressly agree that an application to confirm, vacate, modify or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the county in which the property is located.

32.5.4 This arbitration agreement shall be deemed to be a self-executing arbitration agreement. Any dispute concerning the interpretation or the enforceability of this section, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity of this agreement, or this section, or the scope of arbitrable issues under this section, and any defense relating to the enforcement of this section, including, without limitation, waiver, estoppel, or laches, shall be decided by an arbitrator in accordance with this section and not by a court of law.

32.5.5 The participation by any party in any judicial proceeding concerning this section or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this section notwithstanding any provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this section.

32.5.6 Except as may be otherwise provided in any warranty agreement between Contractor and the buyers of its homes, the administration fee charged by the arbitration service shall be borne pro

rata by the parties to the arbitration; provided, however, the administration fees and any other fees and costs of the arbitration shall ultimately be borne as determined by the Arbitrator.

32.5.7 Contractor and Subcontractor expressly agree and acknowledge that this Agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all disputes (as defined in this section) shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the Federal Arbitration Act, and to the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding. The venue of the arbitration shall be in the county where the Project is located unless the parties agree in writing to another location.

32.5.8 If any provision of this section shall be determined by the Arbitrator or by any court to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

BY INITIALING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

SUBCONTRACTOR’S INITIALS: _____ CONTRACTOR’S INITIALS: _____

The parties hereto have executed this Agreement as of the date first written above.

CONTRACTOR:

SUBCONTRACTOR:

CITY VENTURES CONSTRUCTION, INC.

By: _____

By: _____

Its: _____

Print: _____

Date: _____

Its: _____

Date: _____

By: _____

By: _____

Matt Jansen

Print: _____

Its: Senior VP of Operations

Its: _____

Date: _____

Date: _____

1003565

(CONTRACTOR’S LICENSE NO.)

(SUBCONTRACTOR’S LICENSE NO.)

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS’ STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN(10) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS’ STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA, 95826.

EXHIBIT A

Terms of Payment

This Exhibit is intended to supplement the Agreement. If there is any conflict in language or intent, the Agreement shall prevail.

TERMS

Subcontractor shall bill according to the provisions of the Agreement.

Contractor will make progress payments for each task of Subcontractor's work only upon completion and acceptance by Contractor.

Subcontractor acknowledges that the only instrument that will be valid to authorize changes or extra work relative to this Agreement will be a change order on Contractor's form only, signed by the Chairman, President or Vice President for Contractor. Any signature(s) on any form(s) other than those stated above, regardless of the verbiage, will not be valid. All extra work performed by the Subcontractor shall be borne by the Subcontractor without recourse to Contractor unless properly authorized as stated above. The price paid to the Subcontractor by the Contractor for properly authorized extra work shall be negotiated. Any invoice submitted prior to receipt of a completed Agreement or change order thereto will not be considered a valid invoice and will be returned to the Subcontractor.

Contractor shall have the right at any time to change the scope of Subcontractor's work, to increase or decrease the scope and breadth thereof, and to delete any items from the scope of work; and the agreed upon rate of compensation or sum certain set forth in Exhibit "C" shall be increased or decreased accordingly.

INVOICING PROCEDURE

Subcontractor shall submit its application for payment package (invoice and applicable lien waiver, if any) to Contractor's main office at the address set forth hereinafter in the form of the Contractor's Payment Application. Subcontractor's invoice shall identify the description of work being billed and the percentage of completion against the total amount for such work as set forth in the attached Exhibit "B" titled Schedule of Subcontractor Compensation.

In the event that Contractor determines that the work requested for payment by Subcontractor is not complete, the Subcontractor will be notified by Contractor and the disapproved application for payment package shall be picked up by Subcontractor. A disapproved application payment package shall be remedied/corrected by the Subcontractor and timely returned to Contractor for further processing.

Subcontractor applications for payment shall be received for processing Monday

through Thursday, between the hours of 8:00 AM and 5:00 PM, excluding holidays. The mailing of invoices is preferable and will be considered received upon delivery. All application for payment packages are to be mailed or delivered to:

City Ventures, LLC
3121 Michelson Drive, Suite 150
Irvine, CA 92612
Attn: Accounts Payable

Application for payment packages must be submitted with all of the necessary paperwork as outlined below. Contractor is not responsible for delays in payment or processing that are caused by incomplete or inappropriate invoicing. Correct and complete application for payment packages which are submitted in a timely manner will avert processing and payment delays.

TIMELY SUBMISSION OF PAYMENT APPLICATION

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS EXHIBIT OR THE AGREEMENT TO WHICH IT APPLIES, IN ORDER TO BE PROCESSED FOR PAYMENT, ALL APPLICATIONS FOR PAYMENT MUST BE SUBMITTED BY SUBCONTRACTOR TO OWNER WITHIN NINETY (90) DAYS FOLLOWING THE PERFORMANCE OF THE SERVICES OR WORK COVERED BY THE APPLICATION FOR PAYMENT. ANY APPLICATION FOR PAYMENT NOT SUBMITTED TO OWNER WITHIN SUCH TIME PERIOD WILL NOT BE CONSIDERED TIMELY AND WILL NOT BE PROCESSED FOR PAYMENT. OWNER AND SUBCONTRACTOR EXPRESSLY AGREE THAT THE FOREGOING PROVISIONS ARE REASONABLE IN ORDER TO ASSURE THE ORDERLY, TIMELY AND EFFICIENT ADMINISTRATION OF GENERAL CONTRACTOR'S AND OWNER'S BUSINESS ACTIVITIES AND THAT OWNER SHALL HAVE NO OBLIGATION OR LIABILITY OF ANY NATURE FOR PAYMENT OF AMOUNTS WHICH ARE NOT SUBMITTED FOR PAYMENT WITHIN THE TIME SPECIFIED HEREIN.

SUBMISSION FOR PAYMENT SHALL REQUIRE THE FOLLOWING:

ALL REQUIRED INSURANCE CERTIFICATES AND COPIES OF SUBCONTRACTOR'S CITY BUSINESS LICENSES, IF REQUIRED, MUST BE CURRENT AND IN OWNER'S OFFICE BEFORE ANY INVOICES WILL BE PROCESSED FOR PAYMENT. **Failure to comply with Contractor's insurance requirements will delay processing of payments.**

Change orders to the Agreement shall be submitted **separately** with the same requirements listed above; however, an invoice will need to be generated for each change order. **A copy of the change order must be attached to Subcontractor's invoice.**

Where a construction lender is applicable, lender has final approval in the assessment of percentage of work completed. If the lender reduces the amount paid, Subcontractor must re-invoice commensurate to the provisions of the Subcontractor Agreement.

Contractor may issue joint checks in circumstances where Subcontractor has retained any consultants or subcontractors who have performed work at the Project and for whom payment is due.

Properly completed and approved application payment packages will be paid on a monthly basis. Properly completed and approved application payment packages will be paid within thirty (30) days from Contractor's receipt. Subcontractor is aware that if the application payment packages are not properly completed, not approved by the authorized representative of Contractor prior to submittal, there is indicia of unpaid labor giving rise to claims under California Labor Code section 218.7, or if the lien waivers/releases are not correct, then the application payment packages will not be considered for payment for the current billing cycle. Incomplete application payment packages will be returned to Subcontractor for correction and resubmission. The date of payment will be adjusted to reflect the date the payment package is resubmitted to Contractor.

Checks **MAY NOT** be picked up at Contractor's office unless special arrangements have been made with Contractor's Accounting Department in advance.

LIEN RELEASE (WAIVER) INFORMATION

A Civil Code Section 8132, 8134, 8136, and 8138 Conditional Waiver and Release Upon Progress Payment or a Conditional Waiver and Release Upon Final Payment and Labor Releases in the proper form must be completed in full (if applicable) by Subcontractor and each of Subcontractor's consultant or subcontractor who provided any work or services and attached to each application payment package with the dollar amounts shown net. Copies of Contractor's required forms are available from Contractor. Photocopies of these forms will be acceptable if the signatures are original. These forms conform to California law and are the only language acceptable to Contractor on waiver forms.

PROOF OF PAYMENT OF WAGES AND BENEFITS

For each application for payment, including progress payments, retention, change orders, and any requests for extras, Subcontractor and any lower tier subcontractors under contract to the Subcontractor shall provide payroll records, which, at a minimum, contain the information set forth in subdivision (a) of California Labor Code Section 226, and which are payroll records as contemplated by Labor Code Section 1174, of its employees who are providing labor at the Project, which payroll records shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security

number. The payroll records must contain information sufficient to apprise Contractor of the subcontractor's payment status in making fringe or other benefit payments or contributions to a third party on the employee's behalf.

FORM W-9

Tax legislation requires that we obtain the information required on the attached Form W-9. Subcontractor payments will be withheld, pending receipt of the completed W-9. Even if Subcontractor is a corporation, please fill in the appropriate box with Subcontractor's identification number and complete box two with the word "Exempt". Information provided on Form W-9 will be used to set up Subcontractor's vendor file. Accounts payable checks will be mailed to the address indicated on Form W-9 unless otherwise notified. The completed Form W-9 will be retained on file by Contractor.

EXHIBIT B
SCOPE OF WORK

Project Name:

Subcontractor Name:

PART I:

PLANS AND SPECIFICATIONS

Architecture:

Date ,Delta

Structural:

Date ,Delta

Civil Engineering:

Date ,Delta

Soils:

Date ,Delta

Acoustic:

Date ,Delta

Utility Consultant:

Date ,Delta

Landscaping:

Date ,Delta

Precise Grading:

Date ,Delta

Other:

Date ,Delta

PART II:

SPECIFIC INCLUSIONS

The Work specifically includes the following items, all of which are included in the Contract Price set forth on Exhibit "C". All of the following, unless otherwise noted, include labor, material, equipment installation, supervision and all applicable taxes:

DESCRIBE OR ATTACH AS EXHIBITS ALL DOCUMENTS CONSTITUTING THE SCOPE OF WORK.

The schedule of Work to be performed shall include, but is not limited to, the following:

Model Schedule - Construction Scheduling

Project: Model			
Phase:		Planned Build Cycle:	
Lot:	0001	Overall Sch. Status:	
Model/Elev:	1 / B	To Date Sch. Status:	
Schedule:	MASTER1		

Day	Task Descr	Actual		Planned		WorkDays Duration
		Start Date	End Date	Start Date	End Date	
1	Survey					1
1	Confirm Trench Footings					1
1	Confirm Trench Plumbing					1
1	Confirm Make up Slab					1
1	Confirm CV Model Package Complete					1
1	Schedule Rough Grade					1
1	Schedule Frame					1
1	Schedule Utility Connect					1
1	Schedule Tubs					1
1	Schedule Termite pretreat					1
1	Schedule Windows					1
1	Schedule Engineer/Special inspector					1
1	Schedule Soils Engineer observation					1
2	Trench footings					1
3	Trench plumbing					1
3	Confirm ground plumbing					1
4	Set forms					1
5	Ground plumbing 1/2					1
6	Ground Plumbing 2/2 Inspection					1
7	Make up slab 1/5 backfill plumb/ sand					1
8	Make up slab 2/5 backfill plumb/ sand /methane vent					1
8	Confirm Engineer/Special Inspector					1
8	Confirm Soils Engineer observation					1
9	Make up slab 3/5 methane vent/ boot					1
10	Make up slab 4/5/ methane boot/ smoke test					1
11	Make up slab 5/5/sand					1
11	Confirm Rough Grade					1
11	Engineer/Special Inspector					1
11	Soils Observation					1
12	Pour Slab					1
12	Confirm Frame					1

12	<i>Confirm Windows 1/2</i>	1
12	<i>Confirm Termite Pretreat</i>	1
12	<i>Confirm Utility Connection</i>	1
13	<i>Pull forms</i>	1
14	<i>Rough Grade</i>	1
14	<i>Quality Inspection 1</i>	1
14	<i>Schedule Plumbing Top out</i>	1
14	<i>Schedule Stock Drywall</i>	1
14	<i>Schedule Prelim Insulation</i>	1
14	<i>Schedule Prelim Drywall</i>	1
14	<i>Schedule HVAC lay out</i>	1
14	<i>Schedule Exterior Door Frames</i>	1
14	<i>Schedule Utility Pull</i>	1
14	<i>Schedule Fireplace</i>	1
14	<i>Schedule HVAC Rough</i>	1
14	<i>Schedule Interior Sheet metal</i>	1
14	<i>Schedule Electric Rough</i>	1
14	<i>Schedule Exterior Sheet Metal</i>	1
14	<i>Schedule Low Voltage Rough</i>	1
14	<i>Schedule Roof</i>	1
14	<i>Schedule Solar Rough</i>	1
14	<i>Schedule Fire Sprinklers</i>	1
14	<i>Schedule Fire Sprinkler Monitoring</i>	1
15	<i>Frame- 1/15</i>	1
15	<i>Utility Connection- 1/4</i>	1
16	<i>Frame- 2/15</i>	1
16	<i>Utility Connection- 2/4</i>	1
17	<i>Frame- 3/15</i>	1
17	<i>Utility Connection- 3/4</i>	1
18	<i>Frame- 4/15</i>	1
18	<i>Utility Connection- 4/4</i>	1
18	<i>Confirm Plumbing Top Out</i>	1
19	<i>Frame- 5/15 joist</i>	1
19	<i>Confirm Stock Drywall</i>	1
19	<i>Confirm Prelim Drywall</i>	1
20	<i>Frame- 6/15 sheet 2nd floor</i>	1
20	<i>Plumbing Top Out- 1/10</i>	1
21	<i>Frame- 7/15 snap plate detail 2nd floor</i>	1
21	<i>Plumbing Top Out- 2/10</i>	1
22	<i>Frame- 8/15 stand walls</i>	1
22	<i>Plumbing Top Out- 3/10</i>	1
22	<i>Termite Pretreat</i>	1

31	Solar Rough	1
31	Schedule Fire Caulking	1
31	Schedule Rough Clean 2- MEPS Sweep	1
32	HVAC 2/3	1
32	Electric Rough 2/3	1
32	Roof 1/3	1
32	Install Fireplace	1
32	Confirm Scaffold/Lath	1
32	Confirm Cabinets 1/2	1
32	Confirm Veneer 1/2	1
32	Schedule Insulation	1
32	Schedule Drywall	1
32	Schedule Scratch Coat	1
32	Schedule Brown Coat	1
32	Schedule Pre Cast	1
32	Schedule Exterior Paint	1
32	Schedule Ornamental Iron	1
32	Schedule Gutters/Downspouts	1
32	Schedule Interior Trim	1
32	Schedule Stairs	1
32	Schedule Roof Finish	1
32	Schedule Garage Doors	1
32	Confirm Fire Caulking	1
32	Confirm Rough Clean 2- MEPS Sweep	1
33	HVAC 3/3	1
33	Electric Rough 3/3	1
33	Roof 2/3	1
33	Exterior Sheet Metal 1/2	1
33	Interior Sheet Metal	1
33	Scaffold 1/2	1
33	Low Voltage	1
34	Roof 3/3	1
34	Exterior Sheet Metal 2/2	1
34	Fire Sprinkler 1/2	1
34	Scaffold 2/2	1
35	Fire Sprinkler 2/2	1
35	Lath 1/3	1
35	Fire Sprinkler Monitoring	1
36	Lath 2/3	1
36	Fire Caulking	1
37	Lath 3/3	1
37	Rough Clean 2- MEPS Sweep	1

37	Confirm Drywall	1
37	Confirm Scratch Coat	1
37	Confirm Brown Coat	1
37	Confirm Veneers 2/2	1
37	Confirm Roof Finish	1
37	Confirm Insulation	1
38	MEPS Inspection	1
38	Confirm All Model Options	1
38	Schedule KB's	1
38	Schedule Interior Paint	1
38	Schedule Color Coat	1
38	Schedule Deck Coating	1
38	Quality Inspection 3	1
39	Insulation	1
40	Insulation Inspection	1
41	Drywall 1/8	1
42	Drywall 2/8	1
42	Scratch Coat	1
43	Drywall 3/8	1
44	Drywall 4/8	1
44	Brown Coat	1
45	Drywall 5/8	1
45	Exterior Paint 1/2	1
45	Veneer 1/2	1
45	Schedule Final Deck Color	1
45	Schedule Rough Clean 3- Int/Ext	1
45	Schedule Countertops/tile	1
45	Schedule FireplaceFace	1
45	Schedule Mirrors/Enclosures	1
45	Schedule HVAC Finish	1
45	Schedule Electrical Finish	1
45	Schedule Low Voltage Finish	1
45	Schedule Fire Trim	1
45	Schedule Plumbing Finish	1
45	Schedule Appliances	1
45	Schedule Finish Hardware	1
45	Schedule Solar Finish	1
45	Schedule Plaster digs	1
45	Schedule Finish Grade	1
45	Schedule Curbs/Walks/Patios	1
45	Confirm Garage Door	1
45	Confirm Color Coat	1

45	Confirm Ornamental Iron	1
45	Confirm Gutters/Downspouts	1
45	Confirm KB's	1
45	Confirm Cabinets 2/2	1
45	Confirm Interior Trim	1
45	Confirm Stairs	1
46	Drywall 6/8	1
46	Exterior Paint 2/2	1
46	Veneer 2/2	1
46	Roof Finish 1/2	1
47	Drywall 7/8	1
48	Drywall 8/8	1
48	Quality Inspection 4	1
49	Paint KB's	1
49	Cabinets 1/2	1
49	Interior trim 1/2	1
49	Confirm Rough Clean 3- Int/Ext	1
49	Confirm Solar Finish	1
49	Confirm Interior Paint	1
49	Confirm Finish Grade	1
49	Confirm Plaster Digs	1
49	Confirm Curbs/Walks/Patios	1
49	Schedule Exterior Paint/After Color Coat	1
50	Cabinets 2/2	1
50	Interior Trim 2/2	1
50	Stairs	1
50	Color Coat	1
51	Rough Clean 3- Int/Ext	1
51	Ornamental Iron	1
51	Gutters/Downspouts	1
51	Interior Paint 1/3	1
51	Solar Finish	1
51	Confirm HVAC Finish	1
51	Confirm Electrical Finish	1
51	Confirm Counterop/Tile	1
51	Confirm Fire Trim	1
51	Confirm Plumbing Finish	1
51	Confirm Appliances	1
51	Confirm Low Voltage Finish	1
51	Confirm Finish Hardware	1
51	Confirm Mirrors/Showers	1
51	Confirm Exterior Paint/ After Color Coat	1

51	Schedule Flooring	1
51	Schedule Landscape	1
51	Schedule Fence	1
51	Schedule Model Furniture Install	1
51	Schedule Interior Clean 1- Finish P/U	1
52	Exterior Paint/After Color Coat	1
52	Interior Paint 2/3	1
53	Plaster Digs	1
53	Interior Paint 3/3	1
53	Finish Grade	1
53	Quality Inspection 5	1
54	Countertop Tile 1/3	1
54	Electrical Finish 1/2	1
54	HVAC Finish 1/2	1
54	Curbs/Patios/Walks 1/3	1
55	Countertop Tile 2/3	1
55	Electrical Finish 2/2	1
55	HVAC Finish 2/2	1
55	Low Voltage Finish	1
55	Fire Trim	1
55	Finish Hardware	1
55	Plumbing Finish 1/2	1
55	Curbs/Patios/Walks 2/3	1
55	Confirm Flooring	1
55	Confirm Interior Clean 1- Finish P/U	1
55	Confirm Model Install	1
55	Schedule Interior Clean 2- Flooring P/U	1
55	Schedule Final Paint	1
56	Plumbing Finish 2/2	1
56	Curbs/Patios/Walks 3/3	1
56	Confirm Landscape	1
56	Confirm Fence	1
56	Install Appliances	1
56	Schedule Inspections	1
56	Mirrors/Shower Enclosures	1
56	Interior Clean 1- Finish P/U	1
56	Quality Inspection 6	1
57	Landscape 1/6	1
57	Flooring 1/4	1
58	Landscape 2/6	1
58	Flooring 2/4	1
59	Landscape 3/6	1

59	<i>Confirm Interior Clean 2- Flooring P/U</i>	1
59	<i>Confirm Inspections</i>	1
59	<i>Confirm Final Paint</i>	1
59	<i>Schedule Final Clean- Model P/U</i>	1
59	<i>Flooring 3/4</i>	1
60	<i>Landscape 4/6</i>	1
60	<i>Fence 1/2</i>	1
60	<i>Flooring 4/4</i>	1
61	<i>Landscape 5/6</i>	1
61	<i>Fence 2/2</i>	1
61	<i>Final Paint 1/2</i>	1
61	<i>Inspections 1/2</i>	1
61	<i>Interior Clean 2- Flooring P/U</i>	1
61	<i>Confirm Final Clean- Model P/U</i>	1
62	<i>Landscape 6/6</i>	1
62	<i>Inspections 2/2</i>	1
62	<i>Final Paint 2/2</i>	1
62	<i>Quality Inspection 7</i>	1
63	<i>Model Install 1/2</i>	1
64	<i>Model Install 2/2</i>	1
65	<i>Final Clean- Model P/U</i>	1
65	<i>Quality Inspection 8</i>	1

EXHIBIT C

**SCHEDULE OF UNIT PRICES, CONTRACT PRICE AND SUBCONTRACT PAYMENT
SCHEDULE**

Project Name:

Subcontractor Name:

PART I:

CONTRACT PRICE AND SCHEDULE OF UNIT PRICES

Standard Pricing:

Subcontractor provided pricing to include a reduction for Owner Controlled Insurance Program (OCIP). Once this _____% reduction has been verified as adequate per the terms of this agreement no further bid credits will be withheld from any payments for these contract items to Subcontractor.

PART 2:

SUBCONTRACT PAYMENT SCHEDULE

Total Contract: \$.00

*** Please Do Not Use for Billing Purposes ***

A Purchase Order Matrix to follow after fully executed.

EXHIBIT D – OCIP ADDENDUM

a) Owner has purchased a “Wrap-Up” insurance program (Owner Controlled Insurance Policy) for the Project, with primary coverage provided by _____ Insurance Company Policy No. _____ (the “OCIP”). The OCIP provides Contractor, Owner and other Eligible parties, upon enrollment, with commercial general liability insurance under one policy, replacing liability insurance normally provided by each subcontractor individually for work performed at the Project. Owner has arranged with _____ (the "OCIP Administrator") to act as administrator for the OCIP. Owner has agreed that Contractor and Subcontractor shall have the benefit of this program for no additional consideration than that provided by Subcontractor pursuant to this Agreement and Subcontractor’s performance of its responsibilities under the OCIP. The OCIP shall provide to Eligible Parties general liability insurance and excess liability insurance, as summarily described below, in connection with the performance of the Work at the Project site. Coverages and limits of liability under the OCIP shall apply to all Work designated for inclusion by Owner in the OCIP (and are intended to cover all Contractor’s operations during the policy period). The Eligible Parties are Owner, Contractor, Lender, OCIP Administrator, Subcontractor and each of its sub-tier subcontractors as may apply and as are eligible for coverage under the OCIP, and such other persons or interests as Owner in its sole discretion may designate (each, an "Eligible Party"). A natural or non-natural party who is not an Eligible Party is an Excluded Party. Owner reserves the right, in its sole discretion, to include or exclude any subcontractor from the OCIP, notwithstanding such party's apparent eligibility for same.

Contractor and Subcontractor hereby agree to the following with respect to the OCIP:

Coverage under the OCIP shall apply only to those operations of each Eligible Party performed at the Project site in connection with the Work. An Eligible Party's operations off of the Project site shall only be covered if such "off-site" operations are identified and are dedicated solely to the Project. It is the responsibility of Subcontractor to request the OCIP Administrator to include coverage for specified "off-site" operations. Coverage shall not become effective for such "off-site" operations until receipt by Subcontractor of written acknowledgment of such coverage from the OCIP Administrator. **It is the obligation of the eligible Subcontractor to comply with all of the administrative, insurance and other requirements outlined in this Agreement.**

b) The costs of premiums for the coverage provided by the OCIP shall be paid by Owner. Owner will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retro adjustments, return premiums, audits or otherwise. With respect to each Subcontractor, compensation payable for performance of the Work shall exclude all of Subcontractor’s costs of insurance for coverage provided under the OCIP. The insurance costs shall be deducted from the Contract Price by one or more Insurance Credits (as defined below) in the manner set forth herein. Each Subcontractor warrants that no costs for insurance provided by the OCIP are included in any lump sum or cost plus Agreement costs. All deductibles and self-insured retentions set forth in the insurance policies provided pursuant to the OCIP including, without limitation, the \$_____ per occurrence self-insured retention for coverages A, B, and C, and the \$_____ per occurrence self-insured retention for Coverage D shall be paid by Owner.

(i) At the time the Bid for the Work is submitted, Subcontractor shall provide Contractor, among other things, with an estimate of Subcontractor's costs of insurance for like kinds of coverages to be provided by the OCIP. Contractor shall use such estimated costs, and any other pertinent information available to Contractor, to identify Subcontractor's premium rating basis for Subcontractor's like kinds of coverage. Contractor shall convert Subcontractor's premium rating basis to an initial percentage (the "Bid Credit Percentage") to be deducted from the Contract Price (the "Initial Insurance Credit") as the cost to Contractor of the insurance to be provided under the OCIP (the Initial Insurance Credit, or any subsequent insurance credit taken by Contractor against the Contract Price pursuant to these terms or any other Contract Document, shall be hereinafter referred to as an "Insurance Credit"). The Bid Credit Percentage to be deducted from Subcontractor's bid is ___%. To the extent of a change in the pricing of Subcontractor's like types of insurance, the Bid Credit Percentage will be adjusted on a commensurate basis. If unit pricing is the basis for the Contract Price, Contractor may, at its option, apply a "per unit" Insurance Credit where appropriate. Subcontractor hereby represents and covenants that all insurance cost information submitted to Contractor to calculate any Insurance Credit is or shall be accurate and complete. Subcontractor further agrees that Contractor is entitled to and may collect, from time to time, additional insurance credits resulting from any scope changes, additional work, inaccurate assumptions in the initial credit, or from information discovered during any audits which justify the taking of additional insurance credits based upon the premium rating basis for Subcontractor's like kinds of coverage.

(ii) In order to verify the Initial Insurance Credit, or any subsequent Insurance Credit(s), Subcontractor shall submit all documentation reasonably requested by Contractor in connection therewith, including without limitation, certified copies of insurance policies and rate schedule pages, underwriting and rating information, prior loss histories and, if applicable, information on self-insured retention programs. Contractor has the right to determine additional insurance costs, and to collect such costs by deducting the commensurate Insurance Credit from the Contract Price. If Subcontractor does not provide Contractor with information sufficient to allow Contractor's verification of the applicable Insurance Credit, then Contractor may independently calculate an appropriate Insurance Credit based on undiscounted or "manual" rates. In this event, Subcontractor shall have the option to increase the Contract Price to cover the cost of a subsequently determined Insurance Credit. Contractor reserves the right to reject any such Contract Price increases and terminate the Agreement, at Contractor's discretion.

c) Unless otherwise modified by Contractor, the OCIP shall provide the following insurance to Eligible subcontractors for Work performed at the Project site(s).

(i) **General Liability Insurance (Excluding Automobile)** in a form providing coverage not less than the standard Commercial General Liability coverage part (equivalent to Insurance Services Office (ISO) Occurrence Form 1996), covering personal injury, blanket contractual, explosion, collapse and underground, and products/-completed operations, as follows:

- **Limits of Liability:** The insurance policies will have a total combined limit of liability of TBD per occurrence, TBD general aggregate, and TBD products-completed operations aggregate, for all insureds under the OCIP. Since the OCIP Policy is a "rolling wrap up" covering multiple construction projects, as of _____, the limits remaining under the OCIP Policy are the total limits. This estimate of the available remaining limits is made based upon information provided by Owner's

insurance broker, [broker]. Such disclosure may not accurately reflect the amount of insurance available, if any, subsequent to the date of this disclosure.

- **Policy Period** _____ – _____. Since the OCIP Policy is a “rolling wrap up” covering multiple construction projects, as of [date], the total number of housing units to be covered by the OCIP Policy is estimated to be _____ units.

- **Extension of Coverage:** The products-completed operations coverage is extended so that it applies to "bodily injury" or "property damage" arising from the "products-completed operations hazard" which occurs during the policy period and continuing for ten (10) years following completion of the Project.

- **Trigger of Coverage:** For ongoing operations hazards and premises liability hazards, the trigger of coverage is an “occurrence” (as defined by the OCIP Policy) within the policy period. For completed operations hazards, the trigger of coverage is an “occurrence” within the policy period or the extension of coverage period involving a home constructed in the Project which closed escrow during the Policy Period.

- **Self-Insured Retention:** Under the terms of the OCIP Policy, the only parties who are responsible for payment of the Policy’s self-insured retention are Owner and Contractor. However, in the event of an occurrence which requires Contractor to satisfy its self-insured retention in whole or in part and which arises out of work by or for Subcontractor (or its sub-subcontractors), Subcontractor shall owe Contractor a reasonably allocated share of the self-insured retention (the “contractual share payment”). Contractor shall determine the contractual share payment after careful consideration of the nature of the allegations, potential liability exposure, Subcontractor’s Work and the number of parties with allegations related to their scope of work. The maximum amount of the contractual share payment for Enrolled Parties whose scopes of work or services involve concrete, roofing, framing, siding, plumbing, electrical, sheet metal, stucco, grading, water proofing, HVAC, insulation, and drywall shall be \$50,000 unless the claimant (e.g., the injured claimant, homeowner, or homeowners association) asserts or alleges a failure by that Enrolled Party to comply with applicable building codes or to meet the building standards set forth in Civil Code section 896, et seq., at which time the maximum amount of the contractual share payment shall be \$100,000. The maximum amount of the contractual share payment for all other Enrolled Parties shall be \$25,000. If multiple subcontractors’ obligations to pay contractual share payments are triggered in a single occurrence, then the total amount to be reimbursed to Contractor shall not exceed the total self-insured retention it must satisfy. If the aggregate of contractual share payments collected exceeds Contractor’s self-insured retention, each subcontractor’s contractual share payment shall be reduced pro rata so the aggregate equals Contractor’s self-insured retention amount. Contractor may backcharge Subcontractor (or may withhold from monies otherwise owing to Subcontractor or may collect by any other means provided in the Contract Documents) any contractual share payment owing. This contractual share obligation shall remain uninsured by Subcontractor and will not be covered by the OCIP insurance policies. The OCIP is not intended to provide coverage for routine warranty service during the first 12 months after any home is delivered and the contractual share payment limit discussed above shall not apply to warranty issues, nor does it cover property damage to Contractor’s owned property.

(d) In addition to insurance coverages provided under the OCIP, Subcontractor shall obtain and maintain, and shall require each of its sub-subcontractors to obtain and maintain, the insurance coverages specified in Article 15, with respect to: (a) operations or work away from the Project site and which are not otherwise insured under the OCIP, and (b) Subcontractor's (and its sub-subcontractors') work in, on, at or for projects other than the Project referred to in the Agreement.

(e) If Owner, for any reason, is unable to furnish coverage, elects to discontinue the OCIP, modifies the limits of liability provided in the OCIP, or requests that Subcontractor withdraw from the OCIP, then, upon thirty (30) days' written notice from Contractor, Subcontractor, as specified by Contractor in such notice, shall obtain at Subcontractor's sole cost and thereafter maintain all (or a portion thereof as specified by Contractor) the general liability insurance required by Contractor of its non-Eligible subcontractors, and Contractor shall thereafter no longer be obligated to furnish all or a part of such insurance through the OCIP. In such event, Contractor shall refund to Subcontractor its unearned pro rata share of the actual Insurance Credit deducted from the Contract Price. The form, content, limits of liability and cost of such insurance and the insurers issuing such insurance secured by Subcontractor pursuant to the provisions of this Section shall be subject to the Contractor's approval.

(f) The insurance coverages, terms, conditions and exclusions contemplated herein are set forth in full in its insurance policy form. The description of such policy herein is not intended to be complete or to alter or amend any provision of the actual insurance policy and in matters, if any, in which the description herein conflicts with such insurance policies, the provisions of the actual insurance policy shall govern. Subcontractor acknowledges that it has been provided the right to review the policy and that it is relying solely on the provisions set forth in the actual insurance policies, and not upon any oral or written statement by Contractor, the OCIP Administrator, or others or reference in this document or any other Contract Document.

(g) In addition to insurance coverages provided under the OCIP, Subcontractor shall obtain and maintain, and shall require each of its sub-subcontractors to obtain and maintain, the insurance coverages specified in Article 15, with respect to: (a) operations or work away from the Project site and which are not otherwise insured under the OCIP, and (b) Subcontractor's (and its sub-subcontractors') work in, on, at or for projects other than the Project referred to in the Subcontract Agreement.

(h) Subcontractor shall (a) cooperate fully with the OCIP Administrator and the OCIP Insurers, as applicable, in its or their administration of the OCIP; (b) comply with the terms and conditions of the insurance policies provided pursuant to the OCIP or other provisions of the Contract Documents; (c) incorporate the terms of Article 15 into all contracts with sub-tier subcontractors; (d) assure each sub-tier subcontractor's compliance with the requirements of the OCIP coverages, Article 15, and the other Contract documents for the term of those contracts; (e) require that each sub-tier subcontractor acknowledge, in writing, that Owner, Contractor, Lender, and OCIP Administrator are not agents, partners or guarantors of the OCIP Insurers, and that neither Owner or Contractor is responsible for any claims or disputes between Subcontractor and any of its sub-tier subcontractors and any OCIP Insurer; and (f) include in the Bid for the Work and the calculation of Lockton Enrollment Form A or similar form, an accurate estimate of the cost of any sub-tier subcontractor's insurance costs for the types of coverages to be provided in the OCIP. Subcontractor shall provide, within five (5)

business days of the OCIP Administrator's request, all requested documentation, including but not limited to, certified copies of insurance policies, all underwriting, certified payroll, rating and prior loss history information. Subcontractor agrees that Contractor, the OCIP Administrator, and/or any OCIP Insurer may audit Subcontractor's or any of its sub-tier subcontractor's records and insurance policies to confirm the accuracy thereof, or of any insurance cost information hereafter provided by Subcontractor or any of its sub-tier subcontractors in connection with the Work, or changes to the Scope of Work pursuant to the Contract Documents. Should Subcontractor fail to contractually bind any of its sub-tier trades and/or suppliers enrolled in the OCIP to pay to Contractor and/or Owner the contractual share payment required under this Exhibit D, Subcontractor agrees that it shall be responsible for the payment to Contractor and/or Owner of the contractual share payments of its enrolled sub-tier trades and/or supplier enrolled in the OCIP.

(i) Subcontractor hereby waives all rights of recovery, whether under subrogation or otherwise, because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, against Owner, Contractor, OCIP Administrator, its or their officers, agents, or employees, and any other Contractor, Subcontractor or other individual or entity performing work or rendering services on behalf of Contractor in connection with the planning, development and construction of the Project. Subcontractor shall also require that all insurance policies related to the Work secured by Subcontractor or its sub-tier subcontractors to include clauses providing that each insurance underwriter shall waive all of its rights of recovery by subrogation, or otherwise, against Subcontractor and Contractor together with the same parties referenced immediately above in this Section. Subcontractor shall require similar written express waivers and insurance clauses from each of its sub-subcontractors. This provision shall apply to each Subcontractor performing work or rendering services on behalf of Contractor in connection with the planning, development and construction of the Project irrespective of whether or not it is Eligible in the OCIP. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

EXHIBIT E – GUARANTY

This GUARANTY (the “**Guaranty**”) is entered into effective as of this _____ day of _____, 20____, by and between (**NAME, ADDRESS AND PHONE NUMBER OF PRINCIPAL**) (hereinafter “**Guarantor**”), and CITY VENTURES CONSTRUCTION, INC., (hereinafter “**Contractor**”), California Contractor’s License Number # 1003565 whose address is 3121 Michelson Drive, Suite 150, Irvine, CA 92612; Telephone: (949) 258-7555.

RECITALS

A. City Ventures and _____ (NAME OF SUBCONTRACTOR) (“**Obligor**”) are parties to that certain Subcontract Agreement (the “**Subcontract**”), dated as of or about the date hereof. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Subcontract.

B. As a condition to City Ventures’ entering into the Subcontract, City Ventures has required that Guarantor guaranty all of Obligor’s obligations under the Subcontract in accordance with the terms of this Guaranty.

C. Guarantor is the [INSERT NAME OF INTEREST – principal shareholder/member/partner] of Obligor and will benefit from the execution, delivery and performance of the Subcontract by Obligor.

AGREEMENT

1. Accordingly, for good and valuable consideration, Guarantor hereby agrees to be bound by all obligations of Obligor under the Subcontract (and any other related documents), as the same may be amended from time to time, jointly and severally with Obligor, as if all covenants and obligations under the Subcontract and any related documents originally were made by Guarantor directly to City Ventures, and as if Guarantor was a signatory of the Subcontract and any related documents. The Indemnitees are express third party beneficiaries of this Guaranty. The Indemnities may enforce all rights and benefits afforded to the Indemnitees in the Subcontract against Guarantor as if all covenants and obligations under the Subcontract and any related documents originally were made by Guarantor directly to the Indemnitees, and as if Guarantor was a signatory of the Subcontract and any related documents.

2. Guarantor agrees that (a) there are no conditions precedent to the effectiveness of this Guaranty and this Guaranty has been duly authorized, executed and delivered and constitutes a valid and legally binding obligation of Guarantor enforceable in accordance with its terms, regardless of whether City Ventures obtains any guaranties from others; and (b) the execution and delivery of this Guaranty are not, and the performance of this Guaranty will not be, in contravention of, or in conflict with, any law, rule, regulation or other legal requirement or any agreement, indenture or undertaking to which Guarantor is a party or by which it or any of its assets is or may be bound or affected and do not, and will not cause any security interest, lien or other encumbrance to be created or imposed upon any such assets.

3. Guarantor represents, warrants and covenants to City Ventures that: (a) it will receive material benefit by City Ventures' performance of the terms of the Subcontract, and has received and will receive substantial consideration and benefit; (b) there are no conditions precedent to the effectiveness of this Guaranty and this Guaranty has been duly authorized, executed and delivered and constitutes a valid and legally binding obligation of Guarantor enforceable in accordance with its terms, regardless of whether City Ventures obtains any guaranties from others or takes any other action contemplated by Guarantor; and (c) the execution and delivery of this Guaranty are not, and the performance of this Guaranty will not be, in contravention of, or in conflict with, any law, rule, regulation or other legal requirement or any agreement, indenture or undertaking to which Guarantor is a party or by which it or any of its assets is or may be bound or affected and do not, and will not cause any security interest, lien or other encumbrance to be created or imposed upon any such assets.

4. Guarantor waives (a) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; (b) any right to require City Ventures to proceed against Obligor or any guarantor at any time or to proceed against or exhaust any security held by City Ventures at any time or to pursue any other remedy whatsoever at any time; (c) any defense arising by reason of any disability of Obligor or any guarantor; (d) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Obligor or any principal of Obligor or any defect in the formation of Obligor or any principal of Obligor; (e) any defense based upon an election of remedies by City Ventures; (f) any defense based upon City Ventures' election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (g) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (h) any duty of City Ventures to advise Guarantor of any information known to City Ventures regarding the financial condition of Obligor and all other circumstances affecting Obligor's ability to perform its obligations to City Ventures, it being agreed that Guarantor assumes the responsibility for being and keeping informed regarding such condition or any such circumstances; and (i) any benefit of, or any right to participate in, any security now or hereafter held by City Ventures. Guarantor hereby subordinates to City Ventures any right of subrogation, reimbursement, exoneration, contribution or indemnity, or any right to enforce any remedy which City Ventures now has or may hereafter have against Obligor.

5. In the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Guarantor is the alter ego of Obligor and whether or not Obligor is joined therein or a separate action or actions are brought against Obligor. The obligations of Guarantor hereunder shall remain in full force and effect without regard to, and shall not be affected or impaired by, the following, any of which may be taken without the consent of, or notice to, Guarantor, nor shall any of the following give Guarantor any recourse or right of action against Obligor or City Ventures; (a) any express or implied amendment, modification, renewal, addition, supplement, extension of the Subcontract; (b) any exercise or non-exercise by City Ventures of any right or remedy under the Subcontract, the documents executed in connection therewith or this Guaranty or available at law or in equity; (c) any Bankruptcy or dissolution event relating to Obligor, or by any court, in any such proceeding, whether or not Guarantor has had notice or knowledge of any of the foregoing; (d) any release or discharge of Obligor from its liability under the Subcontract; (e) any subordination, compromise, release (by operation of law or otherwise), discharge, compound, collection, or liquidation of any or all of the property owned by Obligor, or any substitution with respect thereto; (f)

any assignment or other transfer of the Subcontract in whole or in part; or (g) any acceptance of partial performance of the Subcontract.

6. Guarantor agrees to pay all reasonable third party costs and expenses, including attorney fees and costs, which may be incurred by City Ventures in any effort to collect or enforce the obligations of Guarantor hereunder, whether or not any lawsuit is filed, including all costs and attorney fees incurred by City Ventures in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding). Such amounts shall bear interest at the rate equal to the lesser of ten percent (10%) per annum or the highest rate permitted under applicable law from the date such amount should have been paid until the date paid. This Guaranty supersedes any prior negotiations, discussions or communications between Guarantor and City Ventures and constitutes the entire agreement between City Ventures and Guarantor with respect to this Guaranty. Neither this Guaranty nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

7. No delay or failure by City Ventures to exercise any remedy against Obligor or Guarantor will be construed as a waiver of that right or remedy. All remedies of City Ventures are cumulative. The captions and section headings appearing in this Guaranty are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Guaranty. In the event that the provisions of this Guaranty are claimed or held to be inconsistent with the Subcontract, the terms of this Guaranty shall remain fully valid and effective. If any one or more of the provisions of this Guaranty should be determined to be illegal or unenforceable, all other provisions shall remain effective. Every provision of this Guaranty is intended to be severable. In the event any term or provision herein is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain in full force and effect.

8. This Guaranty and the rights and obligations of City Ventures and of Guarantor hereunder shall be governed and construed in accordance with the laws of the State of California, without regard to conflicts of law principles.

The undersigned, intending to be legally bound to the foregoing, has executed this Guaranty as of the date first set forth above.

GUARANTOR:

X_____

SUBCONTRACTOR

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