

MASTER SUBCONTRACT AGREEMENT

Subcontract Agreement No.: _____ Date: _____

In consideration for the mutual covenants contained herein, the Parties hereto agree as follows:

PROJECT NAME	_____		
LOCATION	_____		
CONTRACTOR	KORT BUILDERS, INC.	SUBCONTRACTOR	_____
ADDRESS	<u>8709 Castle Park Drive</u>	ADDRESS	_____
	<u>Indianapolis, Indiana 46256</u>		_____
		PH:	_____ FAX: _____
OWNER	_____	ARCHITECT	_____
ADDRESS	_____	ADDRESS	_____
	_____		_____

ARTICLE 1 - THE SUBCONTRACT DOCUMENTS

1.1 The Subcontract Documents which shall govern this Subcontract and the Subcontract Work (referred to herein as the "Work") consist of this Subcontract and Exhibits listed or referred to herein and any and all other documents which form or govern the Agreement between the Contractor and Owner ("General Contract"). The Subcontract Documents include, without limitation, the Subcontract and General Conditions of the Subcontract, general, supplementary and other Conditions of the General Contract, Drawings, Plans, Specifications, the Project Manual, accepted alternates, all Addenda issued prior to execution of this Subcontract, schedules, and all Modifications issued subsequent hereto. All of the Contract Documents are part of this Subcontract and have been made available for inspection by Subcontractor. A list of drawings, specifications, and Addenda is attached hereto and made a part hereof as Exhibit "A." Subcontractor agrees to be bound to Contractor by all of the terms of the Contract Documents and, with respect to the Work, to assume toward Contractor all of the obligations and responsibilities that Contractor by those instruments assumes toward Owner or other third parties. Subcontractor further agrees that Contractor shall, in addition to other rights and remedies provided by the Subcontract, have the same rights and remedies against Subcontractor that Owner or any other third party has against Contractor under the Contract Documents. In the event that Subcontractor has performed any of the Work prior to the date of this Subcontract, pursuant to authorizations to proceed, letters of intent or otherwise, this Subcontract and the Contract Documents shall govern such prior Work to the same extent as though such Work was performed after the date hereof. These form the Subcontract, and are as fully a part of this Subcontract as if repeated herein. The Subcontract represents the entire and integrated agreement and supersedes all prior negotiations, representations or agreements, either written or oral.

1.2 The Subcontract Documents shall be deemed to include and require all items and aspects of labor, material, equipment, services and transportation incidental to or necessary for the proper and efficient execution and completion of the Work as it relates to the Project. The Subcontract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not specifically covered in the Subcontract Documents or which is subject to question and interpretation because of conflicts, duplications or ambiguities may, at Contractor's option, be required of Subcontractor if it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the results intended by this Subcontract. As such, any part of the Work shown on Drawings but not specifically mentioned in the Specifications or vice versa shall be considered as part of the Work, the same as though included in both.

1.3 In the event of an irreconcilable conflict within or between the terms of the Subcontract Documents, the term(s) which give greater rights to the Contractor or describe the Work hereunder in more qualitative or quantitative respects shall govern, at the option of Contractor, without regard to the party or person who drafted the instrument containing such term.

1.4 Subcontract Work shall consist of performance of the _____ scope of work. The Subcontract Work shall be performed in strict compliance with this Subcontract and the Contract Documents. A description of the Subcontract Work is more particularly described in the attached Exhibit "B," which is attached hereto and made hereof as if fully written herein.

1.5 The minimum quality and fitness of products and workmanship shall be based on the requirements that all Work shall conform with the quality levels established by the Subcontract Documents and any decisions as to the acceptability of products or workmanship shall rest with Contractor and such other parties as provided by the Subcontract Documents. What is or has been usual or customary in a given trade or on other projects shall not limit, qualify or reduce the standards of quality, fitness and/or performance of products and workmanship established by or inferable from the Contract Documents

ARTICLE 2 - GENERAL OBLIGATIONS

2.1 Cooperation. The Subcontractor shall (a) cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors or Owner's own forces; (b) cooperate with the Contractor, other subcontractors and the Owner's own forces whose Work might interfere with the Subcontractor's Work; and (c) advise the Contractor of actual or potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors or the Owner's own forces.

2.2 Submittals. The Subcontractor shall promptly submit (a) shop drawings, product data, samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors; (b) a schedule of values allocated to the various parts of the Work of this Subcontract, aggregating the Subcontract Sum, made out in such detail as required by the Contractor, and supported by such evidence as the Contractor may direct, which schedules of values, as approved, shall form the basis for Subcontractor's applications for payments; and (c) periodic progress reports on the Work of this Subcontract as required by Contractor, including information on the status of materials and equipment which may be in the course of preparation or manufacture.

2.3 If Subcontractor shall make changes in design, including dimensional changes, either through shop drawings or actual field work, it shall accept all responsibility for the structural and functional adequacy of such changes and their acceptance by Owner, Architect or Engineer. Any structural or functional inadequacies which may develop because of such changes shall be remedied by Subcontractor in spite of any approvals given by Owner, Architect or Engineer unless such change is specifically included in a change order provided for in Article 3. In addition, the costs of additional work, redoing or repairing work incurred by other trades or by Contractor resulting from such changes shall be borne by Subcontractor.

2.4 Subcontractor shall at all times supply adequate tools, appliances and equipment, a sufficient number of properly skilled workmen and a sufficient amount of materials and supplies of proper quality to efficiently and promptly prosecute the Work. Subcontractor shall promptly pay for all material purchased, shall pay required fringe benefits and shall pay all workmen each week, and, if requested by Contractor, obtain and furnish Contractor weekly with signed receipts from all workmen showing the date of payment, amount paid, number of hours paid, the days on which said labor was performed, the classification of the labor so paid and the rate of wage per hour paid. Subcontractor also shall supply Contractor weekly with two copies of payroll verified by affidavit, if requested.

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

2.6 Subcontractor, for itself and all others directly or indirectly acting for, through or under Subcontractor, including its subcontractors, material suppliers and all other persons for whom Subcontractor is responsible, in consideration of Contractor making the Subcontract, agrees that no stop work notices, mechanic's liens or claims, or any statutory claim notices to Owner shall be filed against the Project or premises or any interests therein, or against any fund or money due or to become due from Owner to Contractor for or on account of any work, materials, or other items performed or furnished in connection with the Work, except in the event that such waiver is prohibited by law in which event such notice, lien or claims shall not be filed or issued until and unless, as a contractual precondition to the right to proceed with such action, Subcontractor first furnishes written notice to Contractor of its nonpayment and the basis for and amount of such claim within five (5) days from the date that such claim first arises. Should Subcontractor fail to furnish such notice to Contractor, or fail to furnish it in a timely manner, Subcontractor's right to proceed to exercise such statutory remedies as may be allowed to Subcontractor shall be barred. In the event that such waiver is not prohibited by law, then Subcontractor hereby expressly and unconditionally waives and releases any and all such rights and remedies to file such notices, liens and claims, and agrees that this waiver and release shall be an independent covenant and shall apply as well to work performed and materials furnished under a change order or supplemental agreement for extra or additional work.

2.7 Subcontractor will save and keep the Project structures and improvements, the real estate within which the Project is situated, the interests of Owner and all other persons in such Project and real estate, and the contract proceeds or other moneys now due or hereafter to become due and payable by Owner to Contractor, free from all third party mechanic's and other liens and from any claim against the contract proceeds or to establish the personal liability of Owner or Contractor by reason of the Work or any labor, materials or other things used therein. If Subcontractor fails to remove any lien or claim against Owner or the contract proceeds by any of its subcontractors, material suppliers or others for whom it is responsible, by bonding or otherwise as directed by Contractor, and within the time period required by Contractor, then Contractor may retain sufficient funds out of any money due or thereafter to become due by Contractor to Subcontractor to pay the same and all costs incurred by reason thereof and may pay or bond said lien and costs out of any funds at any time in the hands of Contractor and otherwise owing to Subcontractor.

2.8 Protection And Safety. The Subcontractor shall (a) take necessary precautions to protect properly the Work of other subcontractors from damage caused by operations under this Subcontract; (b) take reasonable safety precautions with respect to performance of this Subcontract; (c) comply with safety measures initiated by the Contractor and with applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property in accordance with the requirements of the General Contract; and (d) immediately report to the Contractor any injury to an employee or agent of the Subcontractor which occurs at the site.

2.9 Hazardous Substances. If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

2.10 Compliance With Laws. The Subcontractor shall (a) give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of this Subcontract; (b) secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work; and (c) comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' or workmen's compensation acts.

2.11 Cleanup. The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract.

2.12 Warranty. The Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Work of this Subcontract will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents.

2.13 Subcontractor shall, at its sole expense, promptly and properly repair, replace or otherwise correct any Work that is (i) rejected by Owner, Contractor or Architect, or (ii) known, observed or discovered at any time by Subcontractor, Contractor, Owner or Architect to be defective or failing to conform to the Subcontract Documents and shall pay Contractor for all expenses incurred in any delay caused by remedying defective or otherwise nonconforming Work.

2.14 If within one year after final completion and acceptance of the Project, or such longer period as established with respect to Contractor's obligations under the Subcontract Documents, the Work or any portion thereof is found to be not in accordance with the requirements of the Subcontract Documents, Subcontractor shall correct it promptly after receipt of written notice from Contractor to do so. The period within which Subcontractor shall be obligated to correct Work shall be extended with respect to portions of Work, including corrective work, first performed after final completion and acceptance of the Project. Subcontractor's obligations under this Paragraph shall survive completion and acceptance of the Work and Project and termination of this Subcontract.

2.15 Indemnity. To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Subcontractor, the Subcontractor's sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. The indemnification obligation under this Paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

2.16 In any instance whereby Contractor is entitled, under the terms of this Subcontract, to be indemnified by or recover any moneys from Subcontractor, Contractor shall be entitled, in addition, to recover from Subcontractor (i) interest on any sums due from Subcontractor at the rate of eighteen percent (18%) per annum to accrue from the date due until paid, notwithstanding any dispute or uncertainty concerning the means or standards by which the amount of monetary recovery is to be ascertained, (ii) reasonable attorney fees incurred by Contractor for all investigation, negotiation, litigation, arbitration and other such services commonly performed by attorneys, and (iii) all court costs, fees paid to experts, arbitration fees and like expenses.

2.17 No Assignment. The Subcontractor shall not assign the Work of this Subcontract without the written consent of the Contractor, nor subcontract the whole of this Subcontract without the written consent of the Contractor, nor further subcontract portions of this Subcontract without written notification to the Contractor when such notification is requested by the Contractor.

ARTICLE 3 - CHANGES IN THE WORK

3.1 The Owner may make changes in the Subcontractor's Work by issuing change directives, change orders or otherwise as provided by the Contract Documents (herein referred to collectively as "Modifications"). Upon being notified of such a Modification, the Subcontractor shall not, without Contractor's consent, thereafter order materials or perform Work which would be inconsistent with the changes made by the Modification.

3.2 The Subcontractor may be ordered in writing by the Contractor, to make changes in the Work consisting of additions, deletions or other revisions, including those required by Modifications to the General Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

3.3 No alterations, increases or decreases shall be made in the Work as shown or described by the Subcontract Documents except as specifically authorized or directed by a written order signed by a duly authorized representative of Contractor. Subcontractor shall have no claim for additional, extra or changed Work unless such Work is undertaken in pursuance of such written signed order. Any Work performed without such written order will be at Subcontractor's sole risk and expense.

3.4 The Subcontractor shall make claims promptly to the Contractor for additional cost, damages and extensions of time in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the General Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the General Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

3.5 If Owner, Contractor or Architect disputes the validity or amount of a change proposal or claim submitted by Subcontractor or if a dispute exists between Subcontractor and Contractor concerning whether the Work entitles Subcontractor to additional compensation but Contractor nevertheless directs Subcontractor to proceed with the disputed work, Subcontractor shall promptly commence, prosecute and complete such Work pending resolution of the dispute.

ARTICLE 4 - ARBITRATION

4.1 Any controversy or claim between the Contractor and the Subcontractor arising out of or related to this Subcontract, or the breach thereof, shall be settled by arbitration, which shall be conducted in the same manner and under the same procedure as provided in the General Contract with respect to claims between the Owner and the Contractor, except that a decision by the Architect shall not be a condition precedent to arbitration. If the General Contract does not provide for arbitration or fails to specify the manner and procedure for arbitration, it shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. Venue for such arbitration shall be in Indianapolis, Indiana, and the proceedings shall be governed by the laws of the State of Indiana.

4.2 Any decision or determination by Owner or Architect under the Subcontract Documents that in any manner and by whatever means becomes binding upon Contractor shall also become equally binding upon Subcontractor insofar as it relates to or affects Subcontractor's Work or other obligations assumed or to be fulfilled by Subcontractor, including without limitation any amounts and payments to which Subcontractor may be entitled or for which Subcontractor may be liable. Any award, judgment or agreement in settlement of a dispute concerning such matters and resulting from arbitration, litigation or negotiations in which Owner and Contractor are parties or participants shall be as binding upon Subcontractor and its Surety as though Subcontractor and its Surety were named and joined in such proceeding, provided that Subcontractor has been given a reasonable opportunity to join, participate, assist or provide supporting evidence in the presentation of any claim, defense or other issue in controversy that is settled or resolved thereby.

4.3 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5 - DEFAULT AND TERMINATION

5.1 If the Subcontractor defaults or neglects to carry out the Work in accordance with this Subcontract and fails within two working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the Subcontractor.

5.2 If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Agreement and fails within two working days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after two working days following receipt by the Subcontractor of an additional written notice and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient.

5.3 In the event that Contractor shall elect to proceed as provided under Paragraph 5.2 hereof, Subcontractor shall not be entitled to receive any payment under the Subcontract which might otherwise be due it until the Work shall be finished and payment in full therefor shall be made by Owner to Contractor, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the expenses incurred by Contractor in completing and correcting Subcontractor's Work, plus any costs and damages sustained by Contractor by reason of such failure or lack of performance by Subcontractor, including but not limited to delay damages, attorney's fees, costs of administration, and a reasonable allowance for overhead and profit, such excess shall be paid by Contractor to Subcontractor, but if such expense plus costs and damages shall exceed such unpaid balance, Subcontractor and its surety shall be liable to Contractor for such deficiency. A determination of default made by Contractor in good faith under the belief that a default exists under the terms hereof, shall be conclusive on the fact of such default and on Contractor's right to proceed as herein provided.

5.4 The Contractor may, at any time, terminate the Subcontract for the Contractor's convenience and without cause. Upon receipt of written notice from the Contractor of such termination the Subcontractor shall (a) cease operations as directed by the Contractor in the notice; (b) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing sub-subcontracts and purchase orders. In case of such termination for convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, but shall not be entitled to any compensation in respect of the Work not executed. Recovery by Subcontractor of lost anticipated profit, overhead, or other direct, indirect or consequential damages relating to portions of Work not performed under the uncompleted portions of the Subcontract are hereby specifically excluded. The payment provided by this Paragraph shall constitute Subcontractor's exclusive remedy in the event of such termination.

ARTICLE 6 - COMMENCEMENT AND COMPLETION

6.1 Unless otherwise specified in this Agreement, the date of commencement of Subcontractor's Work shall be the date of this Agreement, as first written above, unless provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

6.2 The Work of this Subcontract shall be performed and completed in accordance with the Progress Schedule Requirements attached hereto as Exhibit "C", and/or Contractor's schedules, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents, it being understood and agreed that time is of the essence of this Subcontract and any breach of same shall go to the essence thereof.

6.3 Subcontractor, in agreeing to complete the Work within the times and sequences herein mentioned, has taken into consideration and made allowances for all hindrances, delays and adverse working conditions which are or may be incident to its Work. Subcontractor acknowledges and agrees that the times allotted by the Subcontract for the performance and completion of the Work are reasonable and take into account the risks and adverse conditions assumed by Subcontractor hereunder. If, in the opinion of Contractor, Subcontractor is behind schedule in its Work or is failing, without cause, to maintain progress of its Work to conform to the general progress of all work for the Project, Subcontractor shall, at its own expense, perform any overtime work, use extra labor, and undertake all other means necessary to bring its Work back on schedule.

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

6.5 In the event Subcontractor's performance of the Work is delayed, suspended, hindered or disrupted for any period of time by individual or cumulative acts or omissions of or interference by Owner, Contractor, Architect, other subcontractors or third parties or due to fire or other casualty, or on account of riots or of strikes, or other combined action of workmen or others, or on account of any acts of God, or any other cause whether or not within the Owner's or Contractor's control, Subcontractor may request an extension of time for performance of the Work; provided, that the extension of time granted to Subcontractor shall not under any circumstances exceed the extension of time granted to Contractor therefor. The right to such time extension shall be Subcontractor's sole and exclusive remedy and accordingly, Subcontractor shall not be entitled to claim or recover any increase in the Subcontract Amount or damages or additional compensation of any type whatsoever as a consequence of any such delays, suspensions, hindrances or disturbances, whether or not contemplated by the parties and regardless of the severity or duration thereof. Subcontractor hereby assumes the risk of all suspensions of, delays in, or hindrances to the performance of the Work, regardless of the length thereof, arising from any and all causes whatsoever, including, without limitation, those causes listed above or on account of any circumstances caused or contributed to by Subcontractor.

6.6 Liquidated damages, if any, assessed by the Owner as against the Contractor on account of delay caused in whole or in part by any act, omission or neglect by the Subcontractor, may be assessed by the Contractor against the Subcontractor to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable.

ARTICLE 7 - TERMS OF PAYMENT

7.1 Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents, based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to Applications for Payment submitted by the Contractor to the Architect, and Certificates for Payment issued by the Architect.

7.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as otherwise on Page 1. The Contractor shall pay the Subcontractor each progress payment within seven working days after the Contractor receives payment from the Owner.

7.3 Each application for payment shall be based upon the most recent approved schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require.

7.4 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment. Except as otherwise provided by the provisions of the Subcontract Documents, the amount of each progress payment shall be computed by taking that portion of the Subcontract Sum properly allocable to completed Work and subtracting (a) the percentage to be retained therefrom as stated on Page 1, and (b) the aggregate of previous payments made by the Contractor. Computations of payments shall not include amounts which are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a Certificate of Payment for a cause which is the fault of the Subcontractor.

7.5 Payments shall not become due to Subcontractor unless and until Contractor receives payment for such Work from Owner and the amount due shall not exceed the amount actually received by Contractor as applicable to Subcontractor's Work; otherwise the time when such payments shall be due Subcontractor shall be postponed until Contractor has received same from Owner. Such receipt of payment by Contractor is intended as a condition precedent to Contractor's duty to pay Subcontractor and Subcontractor accepts such risk. Subcontractor expressly contemplates that payments to it are contingent upon Contractor receiving payment from Owner, and Subcontractor expressly agrees to accept the risk that it will not be paid for work performed by it in the event that Contractor, for whatever reason, is not paid by Owner for such work. Subcontractor relies primarily for payment for work performed on the credit and ability of Owner, and not Contractor,

and Subcontractor agrees that payment by Owner to Contractor for work performed by Subcontractor shall be a condition precedent to any payment obligation of Contractor to Subcontractor.

7.6 Subcontractor shall pay for all materials, machinery, equipment and labor used in, or in connection with, the performance of this Subcontract through the period covered by previous payments received from Contractor, and no interim or final payments shall become due until Subcontractor has furnished affidavits, waivers, releases, certificates, or other evidence, in substance and form satisfactory to Contractor, to establish Subcontractor's payment to or discharge of claims and liens in respect of such materials, machinery, equipment and labor, and any other documents or evidence required by the Contract Documents in a form acceptable to Contractor. Such receipts and /or evidence shall be a condition precedent to any right or claim Subcontractor may have for payment for any work done under the Subcontract.

7.7 If, at any time Contractor, in its sole discretion, determines that Subcontractor's financial condition has become, in Contractor's opinion, unsatisfactory, Subcontractor shall furnish adequate financial security or other equivalent proof of ability to perform, satisfactory to Contractor, within five (5) days after receipt of written notice. Failure to provide the security or proof requested hereunder may be treated by Contractor as a breach or default under Article 5 of this Subcontract.

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

7.9 Payments otherwise due to Subcontractor may be withheld by Contractor upon the existence or reasonable belief of Contractor concerning the existence or probability of (i) uncorrected defective or non-conforming Work, (ii) claims or liens filed or reasonable evidence indicating the probability of the filing of claims, (iii) Subcontractor's failure or neglect to make payments properly due to its sub-subcontractors or for materials, machinery, fuel or labor, or applicable taxes, fees and fringe benefits or (iv) reasonable doubt that the Subcontract can be completed for the balance then unpaid, (v) any other breach of this Subcontract or (vi) any other conditions specified as grounds for such withholding by the Contract Documents. If the said causes are not removed, Contractor may, upon written notice, rectify the same at Subcontractor's expense and may make direct disbursement to unpaid subcontractors, material suppliers and other claimants from payments withheld; the right of Contractor to make such direct payment shall not be construed to create a duty to do so. Contractor may offset and recoup against any sums due Subcontractor the amount of any liquidated or unliquidated obligations of Subcontractor to Contractor, whether or not arising out of this Subcontract.

7.10 Notwithstanding any other provision for interest in the General Contract or Subcontract Documents, Contractor shall not pay any interest, finance charges or carrying charges unless or until payment is due and unpaid in accordance with the terms hereof, in which event, provided Subcontractor is not otherwise in breach or default of the terms of the Subcontract, payments shall bear interest, finance charges or carrying charges at the rate of eighteen percent (18%) per annum from the date payment is otherwise due and owing.

7.11 When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the General Contract, the Contractor shall, upon application by the Subcontractor, make application for payment for such Work, and shall make payment to the Subcontractor within 91 days following issuance by the Architect of the Certificate for Payment covering such substantially completed Work, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the Certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the General Contract for the Subcontractor's Work prior to the completion of the entire Project. If the General Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the Certificate.

7.12 Final payment to Subcontractor shall not become due until and unless (i) all Work for the Project is fully completed and performed in accordance with the Contract Documents and is satisfactory to and approved by Owner, Contractor and Architect, (ii) delivery by Subcontractor of all manuals, "as-built" or record drawings, guarantees, and warranties for material, machinery and equipment furnished by Subcontractor, and testing and/or inspection results or reports, (iii) delivery to Contractor of satisfactory evidence that all labor and material accounts incurred by Subcontractor in connection with his work have been paid in full, (iv) other submittals have been provided as required by the Subcontract Documents, (v) Subcontractor has fulfilled all other requirements which are prescribed by this Subcontract or the Subcontract Documents to serve as conditions to final payment, and (vi) Contractor has received full and final payment from Owner for such Work, which receipt of payment is a condition precedent to Contractor's duty to pay Subcontractor.

ARTICLE 8 - INSURANCE AND BONDS

8.1 Subcontractor shall maintain at its own cost, such insurance as will protect it from claims under the worker's compensation laws of the state of Subcontractor's principal office and the state in which the Work is being performed.

8.2 Subcontractor shall maintain public liability and property damage insurance. Liability insurance shall be carried on an occurrence basis. Amounts of insurance and coverage provided shall be as required by the Contract Documents or as otherwise agreed between the parties separately, in writing. Otherwise, Subcontractor shall carry comprehensive general liability ("CGL") insurance with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate or higher pursuant to the requirements of the General Contract. Subcontractor agrees to carry Auto coverage of \$1,000,000.00 per occurrence or higher pursuant to the requirements of the General Contract. Subcontractor agrees to also carry umbrella liability limits equal to or greater than Contractor's limits. Subcontractor agrees to cause Contractor, Owner, and

Architect to be named as additional insureds on a primary and non-contributory basis on both its CGL and Auto policies. Contractor's policies shall be excess over coverage provided to Contractor as an additional insured under Subcontractor's policy or policies.

8.3 Prior to commencing the Work, Subcontractor shall cause a Certificate of Insurance, naming the Contractor as an additional insured, to be delivered to Contractor. Should Contractor request a copy of the actual policy from Subcontractor, the actual policy or copy thereof will be supplied to Contractor. Contractor may withhold payment to Subcontractor pending receipt of such Certificate or policy in satisfactory form.

8.4 Policies referenced herein shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor. These certificates and the insurance policies required by this Article shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

8.5 Should Subcontractor fail or neglect to provide the required insurance, Contractor shall have the right, but not the duty, to provide such insurance and deduct the cost thereof from any money due to Subcontractor for any and all premiums paid by Contractor for and on account of said insurance. The policy or policies shall further provide that the insurance will not be canceled or changed prior to at least 30 days after written notice by certified mail of such cancellation or change has been received by Contractor.

8.6 The insurance carriers shall have no right of subrogation against the Owner, Contractor, Architect, Subcontractor and sub-subcontractors and their respective officers, directors, consultants, agents and employees.

8.7 If a Performance Bond and/or Payment Bond is required to be provided by Subcontractor (see Page 1), the furnishing of such Bonds shall be a condition precedent to Contractor's obligations in respect of payment to Subcontractor.

ARTICLE 9 - ADDITIONAL PROVISIONS