



Builders, Inc.  
Commercial Contractors

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## MASTER SUBCONTRACT AGREEMENT

This Master Subcontract Agreement ("Subcontract") is entered into by and between \_\_\_\_\_  
\_\_\_\_\_("Subcontractor") and Kort Builders, Inc. ("Contractor").

### Article 1 - The Subcontract Documents

**1.01** This Subcontract shall apply to all Subcontractor Work Orders (each a "Work Order") subsequently entered into between Subcontractor and Contractor that expressly incorporate this Subcontract. Each Work Order will describe the scope of work ("Work") to be performed in connection with a specific project ("Project"). Subcontractor agrees to perform the Work in accordance with the "Subcontract Documents," which include this Subcontract, the Work Order pertaining to the Work, all exhibits to the Work Order and any other document incorporated by reference in this Subcontract or the Work Order pertaining to the Work. "Owner," "Architect," and/or "Engineer" are identified in each Work Order.

**1.02** In addition to the terms of the Subcontract Documents, Subcontractor agrees to be bound to Contractor by all of the terms of the written agreement between Contractor and Owner ("General 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 Documents, have the same rights and remedies against Subcontractor that Owner or any other third party has against Contractor under the General 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, the Subcontract Documents and the General Contract Documents shall govern such prior Work to the same extent as though such Work was performed after the date hereof. A copy of the General Contract Documents will be provided to Subcontractor upon request. This Subcontract represents the entire and integrated agreement and supersedes all prior negotiations, representations or agreements, either written or oral.

**1.03** 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. 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 the Subcontract Documents. By way of example only, any part of the Work shown on any 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.

**1.04** 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.

**1.05** 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 Subcontract Documents.

## Article 2 - General Obligations

**2.01** Subcontractor shall (i) cooperate with Contractor in scheduling and performing the Work to avoid conflict, delay in or interference with the work of Contractor, other subcontractors or Owner's own forces; (ii) cooperate with Contractor, other subcontractors and Owner's own forces whose work might interfere with the Work; and (iii) advise Contractor of actual or potential conflicts between the Work and the work of Contractor, other subcontractors or Owner's own forces.

**2.02** During the Project, Subcontractor shall promptly submit (i) designs, 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 Contractor or other subcontractors; and (ii) periodic progress reports on the Work as required by Contractor, including information on the status of materials and equipment which may be in the course of preparation or manufacture.

**2.03** Subcontractor shall pay for all materials, equipment, labor and services used in connection with the performance of the Work and shall furnish satisfactory evidence, when requested by Contractor, to verify compliance with this requirement. Subcontractor's obligation shall include, but not be limited to, proper and timely payment to its employees and to all its lower tier subcontractors (the "Lower Tier Subcontractors"), including payment of all wages, taxes, contributions and/or other benefits to which its employees are entitled under all wage and hour laws, social security laws, workers compensation statutes, health and welfare plans, David Bacon Act or common/prevaling wage rates (if applicable to the Work) and all other taxes, contributions, benefits or premiums which are payable by operation of law or contract applicable to the Work.

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

**2.05** Subcontractor shall, on a daily basis, clean up and haul off the premises, or to a place on the premises specifically designated by Contractor, all debris occasioned by the Work. Any trash, debris or liquid that poses a possible threat of fire or other safety hazard shall be removed from the premises immediately. Upon completion of the Work, Subcontractor shall leave the Project and premises clean and free of equipment, machinery, materials, temporary facilities and debris and shall clean all areas and finishes which are part of the Work to a level appropriate for Owner's occupancy and use thereof and as otherwise required by the Subcontract Documents. If, after 24-hour notice by Contractor to Subcontractor, Subcontractor has not diligently proceeded with clean-up as outlined herein, Contractor may proceed with such clean-up work and back charge Subcontractor for all costs and expenses incurred, including a ten percent (10%) mark up to cover Contractor's overhead and profit.

**2.06** Subcontractor shall (i) take necessary precautions to protect the Work of other subcontractors from damage caused by operations under this Subcontract; (ii) take reasonable safety precautions with respect to performance of this Subcontract; (iii) comply with safety measures initiated by Contractor and with all applicable laws, ordinances, rules, regulations and orders of public authorities relating to the safety of persons or property; and (iv) immediately report to Contractor any injury to an employee or agent of Subcontractor which occurs at the site of the Project.

**2.07** Subcontractor shall (i) give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work; (ii) secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work; and (iii) comply with federal, state and local tax laws, social security acts, unemployment compensation acts and workers' or workmen's compensation acts.

**2.08** 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 Subcontractor or any of its Lower Tier Subcontractors, Subcontractor shall, prior to use of such substance on the site, give written notice of the chemical composition thereof to Contractor in sufficient detail and time to permit compliance with all applicable laws.

**2.09** If Subcontractor encounters a material or substance on the Project site which Subcontractor believes or suspects may be a hazardous substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), Subcontractor shall promptly stop work in the affected area and shall give notice to Contractor, so that Contractor can notify Owner of the condition in accordance with the General Contract Documents and so that a determination can then be made whether the material or substance is a hazardous material and, if so, what reasonable precautions need to be taken. Once a determination has been made that the material or substance is either not hazardous or the substance has been rendered harmless, Subcontractor's Work in the affected area shall resume upon written agreement of Contractor and Subcontractor. If and to the extent

Contractor obtains a time extension from Owner under the General Contract Documents as a result of the hazardous material being encountered, the Subcontract Time shall be extended appropriately, but only to the extent Contractor actually receives a time extension from Owner. Owner's agreement to a time extension shall be a condition precedent to any obligation of Contractor to grant an extension of the Subcontract Time, which shall be the sole and exclusive remedy available to Subcontractor for any delay caused by the discovery of a hazardous substance. Should Subcontractor, knowing or suspecting that hazardous material has been encountered on the site, fail to immediately stop work and/or fail to give notice as required above, Subcontractor shall, to the fullest extent permitted by law, indemnify, defend and hold harmless Contractor and Owner with respect to claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, which are asserted against or incurred by Contractor or Owner as a result of such hazardous material being disturbed, transported and/or disposed of, regardless of whether such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**2.10** Subcontractor warrants to Contractor, Owner, and Architect, if applicable, 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 will be free from defects not inherent in the quality required or permitted and will be performed in accordance with standards of good workmanship normally possessed and employed by skilled members of the relevant trade and profession, 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.

**2.11** 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.

**2.12** If within one year after final completion and acceptance of the Work, or such longer period as established with respect to Contractor's obligations under the General Contract 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 the Work shall be extended with respect to portions of the Work, including corrective work, first performed after final completion and acceptance of the Work. Subcontractor's obligations hereunder shall survive completion and acceptance of the Work and termination of this Subcontract. Subcontractor's obligation under this Section 2.12 only relates to Subcontractor's obligation to return to the Project site to correct Work and does not limit or shorten the period of time under applicable law for which Contractor may pursue a claim against Subcontractor arising out of defective or nonconforming Work.

### **2.13** Liens and Indemnity

2.13.1 In the event that any employee, agent or representative of the Subcontractor, any Lower Tier Subcontractor (or its employees, agents or representatives) or any other person or entity for whom Subcontractor is responsible, asserts a mechanic's lien, personal liability notice or other payment claim against the Owner, Contractor and/or the Project, or should any other payment claims be asserted against Contractor, Owner and/or the Project arising out of or in any way related to the Work (including but not limited to claims by workers, unions or governmental bodies relating to alleged violations by Subcontractor or its Lower Tier Subcontractors of wage and hour laws, the Davis Bacon Act or common/prevaling wage rates and requirements, if applicable) the Subcontractor shall promptly resolve such lien or claim including, if necessary, bonding such lien off the Project in accordance with applicable law. Subcontractor shall also defend, indemnify and hold harmless the Contractor, Owner and the Project from all losses, damages or costs, including reasonable attorneys' fees, incurred in connection with any such payment claim or lien. Notwithstanding the above, Subcontractor shall not be obligated to indemnify, defend and hold harmless Contractor, Owner and the Project if such mechanics lien, personal liability notice or other payment claim arises as a result of the Contractor's unjustified failure to make payments actually received from Owner for the Work, as such payments become due under this Subcontract, or as a result of Owner's failure to make payment to Contractor under the General Contract Documents.

2.13.2 To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Contractor, Owner and their respective officers, directors, agents and employees ("Indemnitees") from and against all claims, damages, losses and expenses, including reasonable attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss, or expense: is attributable to bodily injury, sickness, disease, or death or injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom; is caused in whole or in part by any negligent or other act or omission of Subcontractor, its Lower Tier Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts the Subcontractor may be

liable; and regardless of whether it is caused, in part, by any negligent or other act or omission of one or more Indemnitees. In any and all claims against Indemnitees by any employee of Subcontractor (or by an employee of its Lower Tier Subcontractors), the indemnification obligation under this section shall not in any manner be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor (or by its Lower Tier Subcontractors) under worker's compensation acts, disability benefit acts or other employee benefit acts.

2.13.3 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.

**2.14** Subcontractor shall not assign the Work without the written consent of Contractor, nor subcontract the whole of this Subcontract without the written consent of Contractor, nor further subcontract portions of this Subcontract without written notification to Contractor when such notification is requested by Contractor.

### **Article 3 - Changes in the Work**

**3.01** Contractor may direct changes to the Work, which may consist of additions, deletions or other revisions to the Work. Where possible, Contractor and Subcontractor shall execute a written modification or amendment to the applicable Work Order that describes the addition, deletion or other revision to the Work prior to Subcontractor performing the Work affected by such modification or amendment. The written modification or amendment to the Work Order shall also include any adjustment to the Subcontract Sum and/or Subcontract Time. In the event that Contractor and Subcontractor cannot agree on the adjustment to the Subcontract Sum and/or Subcontract Time, Contractor may direct Subcontractor, in writing, to proceed with the addition, deletion or other revision to the Work with Contractor and Subcontractor's disagreement regarding any adjustment to the Subcontract Sum and/or Subcontract Time to be resolved in accordance with the Subcontract Documents.

**3.02** If Owner requests changes to the Work directly to the Subcontractor, Subcontractor shall not order materials or perform the Work without Contractor's consent

**3.03** Subcontractor shall not make any addition, deletion or other revision to the Work, as shown or described by the Subcontract Documents, except as specifically authorized or directed in writing by Contractor. Subcontractor shall not perform any addition, deletion or other revision to the Work, or incur any related costs and expenses, until Contractor and Subcontractor have executed a written modification or amendment to the Work Order or, absent agreement, Contractor directs Subcontractor to proceed with the addition, deletion or other revision to the Work in accordance with Section 3.01. Unless such written authorization or directive is given, Subcontractor shall have no claim for additional, extra or changed Work and any Work performed without such written authorization or direction will be at Subcontractor's sole risk and expense.

**3.04** Subcontractor shall make claims promptly to 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 Contractor is required to make under the General Contract Documents within a specified time period or in a specified manner shall be made in sufficient time to permit Contractor to satisfy the requirements of the General Contract Documents. Such claims shall be received by Contractor not less than two working days preceding the time by which Contractor's claim must be made to Owner under the General Contract Documents. Failure of Subcontractor to make such a timely claim shall bind Subcontractor to the same consequences as those to which Contractor is bound.

**3.05** If Subcontractor shall make changes in design of the Work, 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 written authorization or directive in accordance with Section 3.01. 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.

## **Article 4 - Dispute Resolution**

**4.01** Any controversy or claim arising out of or relating to this Subcontract or any Work Order, or the breach thereof, or any wrongful act or omission by Contractor or Subcontractor or the breach of any other duty imposed by law ("Claim") shall be settled as set forth herein:

**4.01.1** First, through mediation, as a condition precedent to binding dispute resolution. Unless the parties mutually agree otherwise, mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the applicable Work Order. A request for mediation shall be made in writing, delivered to the other party to this Subcontract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Work is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**4.01.2** Second, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the applicable Work Order. A demand for arbitration shall be made in writing, delivered to the other party to this Subcontract, and filed with the person or entity administering the arbitration. The parties shall share the arbitrator's fee and any filing fees equally. The arbitration shall be held in the place where the Work is located, unless another location is mutually agreed upon.

**4.02** Either party, at its sole discretion, may consolidate an arbitration conducted under this Subcontract with any other arbitration to which it is a party provided that (1) the arbitrations to be consolidated substantially involve common questions of law or fact, and (2) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**4.03** Subcontractor shall require arbitration as a means of dispute resolution with any third party entity for any disputes related to the Work (i.e. Lower Tier Subcontractors).

**4.04** Any decision or determination by Owner or Architect under the General Contract Documents that in any manner and by whatever means becomes binding upon Contractor shall also become equally binding upon Subcontractor insofar as it relates to or affects the 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.

## **Article 5 - Default and Termination**

**5.01** Contractor shall have the right to terminate this Subcontract and/or any Work Order and require Subcontractor to cease the Work due to Subcontractor's default or for the convenience of the Contractor. If termination is for Subcontractor's default, the respective rights and obligations of the parties shall be as provided in Section 5.02. If termination is for the convenience of Contractor, the rights and obligations of the parties shall be as provided in Section 5.03.

**5.02** If Subcontractor at any time: (i) refuses or neglects to supply adequate and competent supervision or a sufficient number of properly skilled workmen or materials of the proper quality or quantity; (ii) fails in any respect to prosecute the Work with promptness and diligence or otherwise in accordance with the Subcontract Documents; (iii) fails in the performance of any agreement or obligation required by the Subcontract Documents; (iv) delays the work of Contractor, other contractors, subcontractors or other third parties; or (v) is otherwise in breach of its obligations under the Subcontract Documents, then Contractor may, after giving Subcontractor forty-eight (48) hours written notice and Subcontractor's failure to correct or cure such default within that period, terminate this Subcontract and/or any Work Order upon the grounds of Subcontractor's default.

**5.02.1** In the event of such default and Subcontractor's refusal or failure to correct or cure the same within forty eight (48) hours of receiving notice thereof, Contractor shall have the right, in addition to such other rights and remedies as may be afforded to Contractor under the Subcontract Documents or by law, to enter upon the premises and take possession of Subcontractor's materials, equipment, tools and appliances of any kind whatsoever, and to employ or contract with one or more other persons (or use its own forces) to finish the Work and/or to correct or take other necessary action to bring the Work into conformity with the requirements of the Subcontract Documents.

**5.02.2** In the event of termination for default, Subcontractor shall not be entitled to receive any further payment until the Work shall be finished by or on behalf of the Contractor and payment in full has been made by Owner to Contractor. Upon completion of the Work, if the unpaid balance of the Subcontract Sum received by Contractor from Owner, exceeds the expenses incurred by Contractor in completing and correcting the Work (plus any costs and damages sustained by Contractor due to Subcontractor's default, including attorneys' fees, costs of administration, and a reasonable allowance for overhead and profit), such excess shall be paid by Contractor to Subcontractor. However, if all expenses, costs and damages incurred by Contractor to complete and/or correct the Work (including costs, damages and reasonable attorneys' fees incurred by Contractor due to Subcontractor's default and a reasonable allowance for overhead and profit) shall exceed such unpaid balance of the Subcontract Sum received from Owner, Subcontractor and/or its surety, if any, shall be responsible for and pay to Contractor the full amount of such deficiency.

**5.02.3** If Contractor terminates Subcontractor for cause and it is thereafter determined that Subcontractor was not in default, Contractor shall have the right to convert the termination for cause to a termination for Contractor's convenience under Section 5.03.

**5.03** Upon written notice to Subcontractor, Contractor may terminate this Subcontract and/or or any Work Order, in their entirety, for Contractor's convenience and without Subcontractor being at fault. Such termination shall be effective in the manner specified in the notice and without prejudice to any other claims which Contractor may have against Subcontractor. Upon receipt of such notice, Subcontractor shall immediately discontinue the Work, unless the notice directs otherwise, shall take all available steps to cancel Lower Tier Subcontracts and shall thereafter do only what may be necessary to protect and preserve the Work already in place or in progress. If this Subcontract is terminated under this Section and without Subcontractor being at fault, Contractor shall, pay Subcontractor for Work completed in accordance with the Subcontract Documents prior to notice of termination, including a reasonable amount for overhead and profit attributable to the Work actually performed, and any actual expenses incurred which are directly attributable to the termination, adjusted for amounts and damages, if any, for which Subcontractor is liable to Contractor and/or which Contractor is entitled to retain and/or withhold pursuant to the terms of the Subcontract Documents. Subcontractor shall not be entitled to receive anticipated profit, overhead, or other direct, indirect or consequential damages relating to portions of the Work not performed because the Subcontract and/or any Work Order has been terminated.

## **Article 6 - Commencement and Completion**

**6.01** Time is of the essence with respect to this Subcontract and the Work. By executing this Subcontract, Subcontractor agrees to complete the Work within the times and sequences set forth in the Subcontract Documents and represents that it has taken into consideration and made allowances for hindrances, delays and adverse working conditions which are or may be incident to the Work.

**6.02** Unless otherwise specified in this Subcontract, the date of commencement of Work shall be the commencement date stated in the Work Order. The Work Order may provide that the commencement date will be provided in a notice to proceed to be issued to Subcontractor.

**6.03** The Work shall be performed and completed in accordance the Subcontract Time as provided in the Work Order and any progress schedule requirements attached thereto, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents. Subcontractor, in agreeing to complete the Work within the Subcontract Time, 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 in the Work Order 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 performing the 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 the Work back on schedule.

**6.04** If Subcontractor is responsible for any delay in the prosecution or completion of the 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 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 Sum, and without limiting the option of Contractor to terminate this Subcontract for default as herein elsewhere provided.

**6.05** 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 the Subcontract Time; provided, that the extension of the Subcontract 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 Sum 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.

## **Article 7 - Terms of Payment**

**7.01** Contractor shall pay to Subcontractor, as full consideration for the complete, proper and timely performance of the Work and Subcontractor's satisfaction of all other obligations as set forth in the Subcontract Documents, the Subcontract Sum set forth in any Work Order. The Subcontract Sum shall be adjusted only as reflected in any written amendment or modification to the Work Order executed by Contractor and Subcontractor. No payment to Subcontractor shall operate as an approval of the Work, or any part thereof, or as a release of Subcontractor from any of its duties or obligations under the Subcontract Documents.

**7.02** Within fifteen (15) days after executing the Work Order, Subcontractor shall furnish its tax identification number to Contractor (by providing a completed Form W-9). Within fifteen (15) days after executing the Work Order, Subcontractor shall furnish Contractor a verified list of all Lower Tier Subcontractors (including materials suppliers) which Subcontractor intends to utilize for portions of the Work. Contractor may withhold payment from Subcontractor until all required information set forth in this Section has been compiled and delivered by Subcontractor in a form acceptable to Contractor. Other items which Subcontractor must provide to Contractor prior to receipt of payment include Subcontractor's written safety program, in a form acceptable by Contractor, all Certificates of Insurance as required by the Subcontract Documents and all waivers and releases required by the Subcontract Documents.

**7.03** Prior to executing a Work Order, Subcontractor shall submit for Contractor's review and approval a schedule of values (the "Schedule of Values") of the various parts of the Work totaling the Subcontract Sum, made out in such detail and subdivided into such categories as Contractor may require. The Schedule of Values, once approved by Contractor, shall be used as the basis for the preparation, submittal and review of applications for payments, unless later found by Contractor to be in error.

**7.03.1** Subcontractor shall submit written applications for payment to Contractor for the portion of Work satisfactorily performed during the prior month ("Applications for Payment"), in a form and sufficient detail acceptable to Contractor. Based on the Schedule of Values, the Applications for Payment submitted by Subcontractor shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The amount requested in each Application for Payment shall be computed by taking that portion of the Subcontract Sum properly allocable to completed Work (accounting for any portions of the Work as indicated in the Schedule of Values) and subtracting (a) ten percent (10%), which Contractor shall withhold as retainage ("Retainage"), and (b) the aggregate of previous payments made by Contractor. The Retainage will be released to Subcontractor with final payment.

**7.03.2** Contractor agrees to pay Subcontractor within seven (7) working days after Contractor receives payment from Owner as provided in Section 7.04 of this Subcontract.

**7.03.3** Each Application for Payment shall include the Work Order No. and any other relevant information requested by Contractor.

**7.04** Notwithstanding any provision in this Subcontract or any Work Order to the contrary, payments shall not become due to Subcontractor unless and until Contractor receives payment for such Work from Owner and the amount due to Subcontractor shall not exceed the amount actually received by Contractor from Owner for Subcontractor's Work less any retainage. Such receipt of payment by Contractor from Owner 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.

**7.05** Subcontractor shall pay for all materials, machinery, equipment, labor and services used in, or in connection with, the performance of the Work 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, labor and services, and any other documents or evidence required by the Subcontract 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.

**7.06** 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 the Work in accordance with the Subcontract Documents, 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.

**7.07** Subcontractor agrees that moneys received for the performance of Work under the Subcontract Documents shall be held in trust for payment for labor and material utilized in performing the 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 the Project related to the Work Order.

**7.08** 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 or liens, (iii) Subcontractor's failure or neglect to make payments properly due to its Lower Tier Subcontractors or for materials, machinery, fuel, labor or services, or applicable taxes, fees and fringe benefits or (iv) reasonable doubt that the Work can be completed for the unpaid balance of the Subcontract Sum, or (v) any other breach or conditions specified as grounds for such withholding by the Subcontract 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 the Subcontract Documents.

**7.09** Final payment to Subcontractor, including retainage, shall not become due until and unless (i) all Work for the Project is fully completed and performed in accordance with the Subcontract Documents and is satisfactory to and approved by Owner, Contractor and Architect, if applicable (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 the Work have been paid in full including waivers and releases of claims and liens in a form acceptable to Contractor, (iv) other submittals have been provided as required by the Subcontract Documents, (v) Subcontractor has fulfilled all other requirements which are prescribed by 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

**8.01** 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.

**8.02** Subcontractor shall maintain such insurance as will protect the Subcontractor from claims set forth below which may arise out of or result from the Subcontractor's operations and completed operations under the Subcontract Documents and for which the Subcontractor may be legally liable, whether such operations be by the Subcontractor, a Lower Tier Contractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

**8.02.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work;

**8.02.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Subcontractor's employees or any person other than the Contractor's employees;

**8.02.3** Claims for damages insured by usual personal injury liability coverage;

**8.02.4** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

**8.02.5** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

**8.02.6** Claims for bodily injury or property damage arising out of completed operations.

**8.03** Insurance shall be carried on an occurrence basis. The insurance policies to be maintained by Subcontractor, including minimum limits and coverage, shall be as required by the Subcontract Documents or as otherwise agreed between the parties separately, in writing.

**8.04** Prior to commencing the Work, Subcontractor shall deliver to Contractor a Certificate of Insurance, naming Contractor, Owner, and Architect, if applicable, as additional insureds on a primary and non-contributory basis on both its Comprehensive General Liability, Auto, Employer's Liability and Umbrella/Excess policies.

**8.05** 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.

**8.06** Policies referenced herein shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment to 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 Contractor.

**8.07** 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.

**8.08** 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.

**8.09** If and to the extent the Work Order requires Subcontractor to post bonds, Subcontractor shall provide to Contractor, as named obligee, fully executed Payment and Performance Bonds, each with penal sums equal to the Subcontract Sum, and/or a fully executed Maintenance Bond. Such bond shall be submitted to Contractor within fourteen (14) days after execution of the Work Order on forms satisfactory to the Contractor. The surety company shall have an A.M. Best's rating not less than A- VIII, be licensed as a surety in the State where the Work takes place, shall appear on the United State Treasury Service Department Circular 570 (the "Treasury List"). The premium costs for such bonds shall be included in the Subcontract Sum. If Bonds are required for the Project, Subcontractor shall have no right to receive any payments for the Work, unless and until all bonds as required by the Work Order are properly executed and delivered to Contractor, regardless of the status of the Work or performance by Subcontractor.

## **Article 9 - ARTICLE 9 - ADDITIONAL PROVISIONS**

**9.01** Subcontractor hereby represents and warrants that (i) Subcontractor is duly organized, validly existing and in good standing with full power and authority to conduct its business; (ii) Subcontractor is authorized to enter into the Subcontract Documents to perform the Work; and (iii) the Subcontract Documents are signed by a corporate officer who has been duly authorized to execute the Subcontract Documents on behalf of Subcontractor.

**9.02** Subcontractor acknowledges receipt of a true signed copy of this Subcontract and acknowledges that they or its duly authorized representative have read and knows the contents hereof. This Subcontract and any related Work Order are solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. This Subcontract and any related Work Order and each provision thereof is for the exclusive benefit of Subcontractor and Contractor and not for the benefit of any third party nor any third party beneficiary thereof, except to the extent expressly provided in the Subcontract Documents.

**9.03** The Subcontract Documents shall be binding upon the heirs, administrators, executors and assigns of the respective parties hereto.

**9.04** The Subcontract Documents shall be governed by the law of the State of Indiana.

*[Remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the undersigned being duly authorized, has executed this Subcontract which shall be effective as of the day and year last written below.

**SUBCONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR:**

Kort Builders, Inc.  
8709 Castle Park Drive  
Indianapolis, Indiana 46256

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_