

# PACIFIC WEST DEVELOPMENT, LP MASTER SUBCONTRACT AGREEMENT

This Master Subcontract Agreement (“Agreement”) is made on , between **PACIFIC WEST DEVELOPMENT, LP**, a California limited partnership (“Builder”), and (“Subcontractor”).

**Builder:**

**PACIFIC WEST DEVELOPMENT, LP**  
32823 Temecula Parkway, Suite A  
Temecula, CA 92592  
www.pwdevelopment.com

CA License No. 918075

**Subcontractor:**

CA License No.

**Subcontractor’s Designated Representative:**

Builder and Subcontractor, upon their mutual execution of this Master Subcontract Agreement, agree to be bound to it in accordance with all of the terms and conditions as contained herein for work performed by Subcontractor on all of Builder’s projects as follows:

## PURPOSE AND APPLICATION OF THIS AGREEMENT

Master Subcontract Agreement: This Agreement is being entered into by Builder and Subcontractor with the intent and understanding that it will serve as a master subcontract agreement for which Builder may engage Subcontractor to perform work on multiple projects, so as to avoid negotiation and execution of separate agreements for each project. This Agreement does not create an obligation that Builder shall award any project to Subcontractor, Builder does not guarantee any particular quantity of work to Subcontractor, and Builder may, at its sole option, retain others to perform work similar to the work to be performed by Subcontractor at any job location in addition to or in place of Subcontractor. Subcontractor shall not be entitled to any compensation in the event that Builder takes any or all of the aforementioned actions. Builder and Subcontractor shall execute this Agreement as condition precedent to the execution of any Additional Work Amendment for a specific project that will incorporate this Agreement by reference. Both parties acknowledge that this Agreement will govern all projects for which an Additional Work Amendment is executed. This Agreement will commence on the date set forth above and continue for a period of one year. This Agreement will automatically renew from year to year, and may be updated or amended by Builder from time to time. Either party may terminate this Agreement at any time by giving written notice to the other. Termination of this Agreement will not affect any Additional Work Amendment that has been commenced between the parties prior to the date of termination.

The Additional Work Amendment: The parties, for each project awarded to Subcontractor, shall execute an Additional Work Amendment. The Additional Work Amendment will include all project specific terms and conditions, such as insurance requirements, project information, the scope of work and price, payment schedule, contract documents, construction schedule, surety requirements, and any special provisions. The Additional Work Amendment will also identify the Project Owner, lender (if any), and architect/engineer for each project. The Additional Work Amendment may modify and/or supplement the terms and conditions of this Agreement.

Subcontractor’s Proposal: At Builder’s request, Subcontractor shall submit a proposal (Proposal) to Builder for any potential Additional Work Amendment, and Builder shall notify Subcontractor in writing of its acceptance or rejection of such

Proposal. Any terms and conditions included in the Proposal shall not modify, amend, add, or subtract from the terms and conditions contained in this Agreement or any specific Additional Work Amendment, and the terms and conditions contained in this Agreement and/or any specific Additional Work Amendment shall supersede and prevail over any additional or different terms and conditions contained in the Proposal.

General Conditions: The “General Conditions” set forth below are the basic terms and conditions upon which each Additional Work Amendment will proceed. To the extent a conflict exists between an Additional Work Amendment and the General Conditions contained in this Agreement, the terms and conditions of the specific Additional Work Amendment will prevail.

## GENERAL CONDITIONS

**1. General.** Pursuant to each Additional Work Amendment, Subcontractor shall perform certain construction (and possibly design) work on each project as a subcontractor. The work (as defined in each Additional Work Amendment) is not limited by any titles on the drawings or headings in the specifications, it being the intention of the parties that all work customarily performed with the work shall be performed by Subcontractor, including any and all items and services consistent with, contemplated by, and reasonably inferable from the Contract Documents (as defined in each Additional Work Amendment) and reasonably necessary to provide a complete and fully functioning scope of work, whether or not such items and services are specifically mentioned therein, unless specifically excluded in a Additional Work Amendment. This Agreement and any Additional Work Amendment can only be modified by a written instrument signed by an authorized representative of Builder and Subcontractor.

**1.1 Contract Documents.** The “Contract Documents” are defined in each Additional Work Amendment. The work may be described throughout different parts of the Contract Documents. Subcontractor shall perform and complete its entire portion of the work no matter where in the Contract Documents the work is described, depicted, or referenced. For each project, the Contract Documents are incorporated into this Agreement by this reference, with the same force and effect as if set forth in full, and Subcontractor and its subcontractors shall be and are bound by any and all of the Contract Documents insofar as they relate in any way, directly or indirectly, to the work set forth in any Additional Work Amendment. Subcontractor agrees to be bound to Builder in the same manner and to the same extent that Builder is bound to the Project Owner under the Contract Documents for each project, to the extent of the work set forth in each Additional Work Amendment. In all instances where the Contract Documents refer to Builder, and the work, specification, or condition pertains to Subcontractor’s work, the reference to Builder shall be deemed to be a reference to Subcontractor.

**1.2 Conflicts or Omissions in Contract Documents.** If Subcontractor believes that there is or may be any conflict between or omission from this Agreement, any Additional Work Amendment, or the Contract Documents, or if Subcontractor has any doubt as to the meaning thereof, Subcontractor shall immediately submit the matter to Builder for written clarification. Any work performed before receipt of such clarification shall be at Subcontractor’s risk and expense. If any clarification of any Contract Document is needed, Builder will clarify the same by issuing a written order pursuant to this Agreement. There shall be no increase in any Additional Work Amendment Price or extension of the time for completion of any Additional Work Amendment on account of any mis-description or omission in a Contract Document of details of the work that are necessary to carry out the intent of the Contract Documents or that are customarily performed or furnished by contractors performing work similar to the work described in any Additional Work Amendment.

**1.3 Subcontractor Representations.** Subcontractor represents the following: (a) it is properly licensed to perform each Additional Work Amendment; (b) its lower-tier subcontractors, if any, are properly licensed to perform work arising from each Additional Work Amendment; (c) it is fully qualified to perform each Additional Work Amendment and is experienced in the type of work required by each Additional Work Amendment; (d) it has had a sufficient opportunity to review and has carefully examined all of the Contract Documents and each project site before commencing work on any Additional Work Amendment; (e) it has satisfied itself as to the character, quality, and quantity of the work to be performed for each Additional Work Amendment, the conditions that will be encountered at each project site or otherwise affect the cost or difficulty of performing the work, the materials and equipment and other items to be furnished, and all other requirements of the Contract Documents; and (f) if applicable, it is fully capable and experienced in design-build contracting and understands the increased and inherent risks associated therewith.

**2. Commencement/Schedule of Work.** Following execution of an Additional Work Amendment by the parties, Subcontractor shall have no authority to commence any work until Builder has issued instructions to proceed. Unless otherwise agreed to in writing, Subcontractor shall commence the work within 3 days of Builder’s instructions to proceed, and if the work is interrupted at the direction of Builder, Subcontractor shall resume the work within two (2) days from Builder’s instructions to proceed.

**2.1 Change in Construction Schedule.** Builder may alter the time, order and priority of all components of the work and all matters relative to the timely and orderly conduct of the work. Subcontractor agrees that Builder shall have the right to make changes to the schedule of work and agrees to comply with such changes, and Subcontractor further agrees that it shall not be entitled to any additional compensation for such schedule changes.

**2.2 Acceleration of Construction Schedule.** If Builder elects to accelerate Subcontractor's performance and where Subcontractor would otherwise be entitled to an extension of time pursuant to this Agreement, the contract price to be paid by Builder shall be equitably adjusted based on the cost of any overtime premiums actually incurred by Subcontractor.

**2.3 Failure to Conform to Construction Schedule/Penalty.** Subcontractor is aware that Builder must conform to a strict schedule and its failure to do so will cause Builder, and Project Owner, to incur certain costs and expenses. If Subcontractor falls behind the construction schedule for any reason caused by or contributed to by Subcontractor (or by any person or entity under Subcontractor's control), and Builder, in good faith, determines Subcontractor will be unable to conform to the construction schedule, Builder may, in its sole discretion, (1) direct Subcontractor to accelerate the progress of the work at Subcontractor's sole cost, by any means, including but not limited to, by employing additional workers and/or working overtime, or (2) invoke its rights under Section 24 of this Agreement. If Subcontractor (1) fails to comply with Builder's demand for accelerated performance, (2) fails to successfully accelerate so as to capture all lost time, or (3) completes its work after the scheduled completion date per the applicable Additional Work Amendment, and because it will be extremely difficult and impractical, if not impossible, to ascertain with any degree of certainty the actual amount of Project Owner's and Builder's damages if any of the above events occur, the parties hereby agree that **two hundred fifty hundred dollars (\$250.00) per day** for each day Subcontractor is in default represents a reasonable estimate of such damages resulting from delay considering all of the circumstances existing on the date of execution of this Agreement and Additional Work Amendment, and that Builder shall have the right to retain the full amount of said sum against Subcontractor funds owed to Subcontractor in an attempt to remedy Project Owner's and Builder's potential damages should Subcontractor default. However, in addition to the above penalty and damages, Builder reserves the right to recover any and all other damages or costs incurred as a result of Subcontractor's failure to perform its work in accordance with the construction schedule, including, but not limited to, extra costs of completion, Builder's incidental and consequential damages from Subcontractor's delay, including field and home office expenses, and liability for liquidated damages or penalties to the Project Owner.

**2.4 Subcontractor Delay Recourse.** Should Subcontractor be delayed in the prosecution or completion of the work by the act, neglect, or default of the Project Owner or Builder, then Subcontractor shall be entitled to a time extension for its work by the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim is presented in writing to Builder within 48 hours of the commencement of such delay, and under no circumstances shall the time for completion of the work be extended to a date which will prevent Builder from completing Builder's scope of work within the time that the Project Owner allows Builder for such completion. An extension of time for Subcontractor's completion of the work pursuant to this Section shall be Subcontractor's sole remedy unless compensation is obtained by Builder from Owner as set forth below. No claims for additional compensation or damages for delays, disruption, compression, acceleration, labor inefficiencies, suspensions of work, materials cost escalation, extended overhead, schedule impacts, or any other delay damages ("Schedule Claims"), whether caused in whole or in part by the negligence, breach of contract, or other act of Builder, shall be recoverable from the Project Owner, Builder, or Builder's surety. However, in the event, and in such event only, that Builder obtains additional compensation from the Project Owner on account of any such Schedule Claims, Subcontractor shall be entitled to such portion of the additional compensation so received by Builder as is equitable under all of the circumstances. This Section shall not require Builder to make any claim against the Project Owner for such Schedule Claims, and it is specifically agreed that the failure of Builder to prosecute any such Schedule Claims against the Project Owner shall not entitle Subcontractor to any claim for damages against Builder.

### **3. Performance of Work.**

**3.1 Agreement to Complete the Work.** Subcontractor's commencement of work shall be deemed Subcontractor's agreement to complete the work by the completion date specified in the construction schedule, and Subcontractor's representation and acknowledgment that Subcontractor has reviewed and approved the Contract Documents, the job location and all other requirements and conditions of the work. Subcontractor acknowledges that Subcontractor is thoroughly familiar with the Contract Documents and all related materials prior to the execution of any Additional Work Amendment.

**3.2 Standards.** Subcontractor shall perform all work in a good and workmanlike manner, in accordance with all applicable and accepted building industry standards and practices, applicable building and industry codes

and regulations, and in accordance with terms of this Agreement. All work shall be performed to the reasonable satisfaction of Builder. Whenever any manufactured article, implement or series of articles or implements are mentioned in the specifications by name, trade or manufacturer's name, it is intended to establish a standard of merit and quality. The intent of this definition is to require quality materials and workmanship; however substitutes of equal merit may be used by Subcontractor, but only upon the written consent of Builder or its authorized representative. Under no circumstances shall a substitute material be used which will not conform to requirements set forth in the contract documents.

**3.3 Representatives.** Subcontractor shall have a competent representative at each project during all working hours that shall have absolute authority to act, in all respects, on behalf of and for Subcontractor. Subcontractor shall replace the representative, without additional charge, if so demanded by Builder.

**3.4 Work of Other Subcontractors.** Subcontractor shall be responsible for inspecting any work of another Subcontractor that may affect Subcontractor's own work, and shall report in writing to Builder any defects therein prior to commencement of any work, or Subcontractor shall be deemed to have accepted such work for inclusion into Subcontractor's work.

**3.5 Authorization to Perform Work.** Prior to and at all times during performance of work, Subcontractor shall secure and maintain all licenses and governmental approvals necessary for or applicable to its performance of said work.

**3.6 Repair Work.** Subcontractor's work includes, but is not limited to, the immediate repair or replacement of defective or damaged workmanship and/or materials installed by Subcontractor upon being notified to make such repairs or replacements, in accordance with and during the periods of time set forth in the Additional Work Amendment, and any time period for which Builder and the Project Owner may be obligated to any third party for warranty repairs to the work, and all applicable laws. If Subcontractor fails to commence or diligently and continuously complete the repair of any defective work in accordance with this provision, Builder shall have the right, but not the obligation, to perform such work. If Builder performs such work, the costs thereof, plus an additional twenty percent (20%) for Builder's overhead and administrative costs, shall at Builder's option, either be deducted from any sums owed by Builder to Subcontractor or be immediately reimbursed by Subcontractor. Furthermore, Subcontractor may not make a claim against the Project's Owner Controlled Insurance Program (if any) for the reimbursement of any costs to repair said work or deductions from amounts owed to Subcontractor pursuant to this Section. Subcontractor's obligation to repair and correct its work as may be necessary shall be triggered upon the performance of its work, and the failure of Owner and/or the project lender to disburse funds to Builder in which to pay Subcontractor for its work under this Agreement shall not act to relieve Subcontractor of the obligation to repair and correct its work within the period established by this Agreement.

**3.7 Compliance with Agencies and Codes.** Subcontractor warrants that its work will meet or exceed all applicable state and local municipal building codes, FHA minimum property standards, VA requirements, all manufacturers' and suppliers' specifications, and all other standards and requirements imposed by all governmental and private agencies, including craft unions, exercising jurisdiction over any of Builder's projects ("**Agencies**"). Subcontractor agrees to fully comply with all applicable federal and state statutes, all industry standard practices, and all other ordinances, laws, rules, and regulations applicable to the work on any Additional Work Amendment, including Federal and California labor, wage, and tax laws ("**Codes**"). Subcontractor shall comply with all applicable Codes whether enacted at the time of entering into this Agreement or at any time during the performance of any Additional Work Amendment. Subcontractor, as part of its compliance, shall become aware of, and readily comply with, any notification and/or reporting requirements of these Codes, and the associated penalties and deductions for failure to comply. Subcontractor shall ensure and be responsible for similar compliance by all those working under Subcontractor in performance of its work. Subcontractor shall promptly cure, pay, remedy, or otherwise cause to be removed any violation, citation, fine, penalty, or claim by any Agency due to the failure of Subcontractor, or anyone working under it, to so comply, and Subcontractor shall defend and indemnify Builder from, and be solely responsible for, any fines, penalties and repairs necessary as a result of Subcontractor's failure to comply with the requirements of the Agencies or and any violation of any of the Codes applicable to the work of Subcontractor.

**3.8 Construction Means and Methods.** Subcontractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and Subcontractor shall supervise and coordinate all aspects of its work using Subcontractor's expertise, best skill and attention, subject to the overall coordination of the work by Builder.

**3.9 Shop Drawings.** To prevent any delay, Subcontractor shall promptly submit and provide any and all samples and/or shop drawings necessary to complete its work, including responding immediately to any request from Builder for samples and/or shop drawings. All submittals shall be complete, correct, and in proper format in all respects. Electronic submittals are to be provided by Subcontractor when requested by Builder or required in any Additional Work

Amendment. Subcontractor shall be responsible and liable for all costs incurred or associated with re-submittals, re-review, or requests for material variations or substitutions.

**3.10 Inspections.** Construction work in progress shall be subject to inspection and approval by the Agencies and by Builder and its representatives. Builder may visit and inspect Subcontractor's business premises, vicinity of the work, and the materials used in connection with the work. If any Codes or Agencies require any of the work to be tested, inspected, or approved, Subcontractor shall give Builder reasonable notice of the time and place of such inspection. All payments shall be conditioned upon prior inspection and approval of its work. Subcontractor shall cooperate with and allow Builder and the Agencies to inspect the Subcontractor's work. At Builder's request any time before final acceptance of the work, Subcontractor shall uncover any portion of the work for examination by Builder and the Agencies, and Subcontractor shall restore such portions to the standards required by this Agreement. If the work examined is unacceptable, or if the work was performed without inspection by Builder or the Agencies, the uncovering, removing, and replacing of the work shall be at Subcontractor's expense, along with the cost of any additional testing or inspections.

**3.11 Third Party Quality Assurance.** In addition to the inspections required under paragraph 3.11 above, Builder and the Project Owner may retain a consultant(s) to render certain professional consulting services, including but not limited to, providing technical plan review, forensic consulting, construction consulting, third party site inspection, training, product evaluation research and/or testing, and risk evaluation services for Builder, of which consultant has the ability, experience and knowledge to perform in accordance with and in a manner consistent with generally recognized standards and practices.

**3.11.1** Comprehensive inspections are conducted prior to foundation pours and during the rough trade installations. Inspections will verify compliance with the applicable sections of the uniform building code, architectural drawings, and manufacturer's specifications when applicable. Consultants provide independently unbiased evaluations and verifications for the following: Foundations, Structural Framing, Insulation, Windows and Doors, Mechanical, Plumbing, Roofing, Sheet Metal, Electrical, Exterior Siding, Performance Testing (Duct efficiency testing, Calibrated blower door inspections).

**3.11.2** Field Trade reports will be given to Subcontractor field foreman along with tag locating the work needing improvement. It is very important that the tag remains until after Builder's field representative verifies the correction has been completed satisfactorily; only then should the tag be removed and filed with the signed field report from the Subcontractor.

**3.11.3** Subcontractor's foreman or field representative shall sign and date the field report and orange tag. Builder shall keep and maintain reports and tags in lot folder. Subcontractor shall not bill until all corrections are made and approved for by Builder's Representative with signed reports and orange tags.

**3.11.4** This Third-Party Quality Assurance service shall be in addition to Subcontractor's own quality assurance program. It is not intended to replace any existing quality measures Subcontractor is obligated to perform pursuant to its contractual duties and obligations under this Agreement and the accepted standards of practice. Any disputes or contradictory information may be challenged in writing if such challenge results in a more durable, safe, and cosmetically pleasing solution. Any trade that destroys or covers up uncorrected tagged items shall be responsible for changes associated with all removal and reinstallation of such covering plus any delays resulting there from. **NO PAYMENTS WILL BE PROCESSED WITHOUT SIGNED REPORTS.**

**3.12 As-Built Drawings.** On each project in which Subcontractor performs work, it shall maintain an as-built drawing record, and shall submit four (4) copies of the record to Builder and, if required, to any of the Agencies.

**3.13 Layout and Dimensions.** The layout, dimensions, and field measurements of Subcontractor's work are the sole responsibility of Subcontractor. Subcontractor shall be liable for any costs incurred by Builder due to the mis-location or incorrect dimensions of Subcontractor's work.

**3.14 Cooperation.** Subcontractor shall at all times cooperate with Builder and others engaged in the project, and shall coordinate its work with that of all others so as to facilitate the efficient and timely completion of the entire project.

**3.15 Patents.** Except for particular products specified by the Project Owner or Builder, Subcontractor shall indemnify, defend, and hold Builder and the Project Owner harmless against any claims made on account of any actual or alleged violations or infringements of any patent rights arising out of Subcontractor's work.

**3.16 Protection of Work.** All work covered by any Additional Work Amendment, done at any site of construction, or in preparing or delivering materials or equipment to a site, shall be at the risk of Subcontractor exclusively. Subcontractor should obtain and pay for such insurance to protect against risk of loss to Subcontractor's material and work, whether in transit, stored, or installed. Subcontractor shall effectively secure and protect the work and assume full responsibility for its condition until final acceptance by Builder. Subcontractor agrees to provide such protection as is necessary to protect the work and the workmen of Builder and other contractors from Subcontractor's operations. Subcontractor shall be liable for any loss or damage to any work in place and to any equipment or materials on the job site caused by any action or inaction of Subcontractor or its agents, employees, or guests.

**3.17 Labor Relations.** Subcontractor shall employ labor under conditions satisfactory to Builder. Prior to commencing work on any Additional Work Amendment, Subcontractor shall notify Builder of all collective bargaining agreements to which it is signatory, and shall provide a copy of all such agreements within 24 hours of request by Builder. Subcontractor shall provide Builder with at least 30 days' notice of the anticipated expiration of each collective bargaining agreement. If Subcontractor enters into subsequent or new collective bargaining agreements during the course of any Additional Work Amendment, it will notify and provide Builder with a copy of such agreement. Subcontractor warrants that with respect to any work covered by any Additional Work Amendment, it and its subcontractors and suppliers will at all times fully comply with the provisions of any collective bargaining agreements and related trust agreements to which it or they are bound. Strikes, picketing, or any other stoppage of work by employees performing work on, or delivering materials to, any job site shall not excuse any delay by Subcontractor, regardless of whether the strike, picketing, or other work stoppage is attributed to union action or the decision of an individual employee. Notwithstanding any other provision of the Agreement, Builder reserves the absolute right to terminate any Additional Work Amendment upon 24 hours' written notice if, due to a labor dispute, there is an interruption in Subcontractor's performance.

#### **4. Project Investigation**

**4.1 Location of Work.** Builder may provide Subcontractor with location surveys, plot plans or alignment maps ("**Maps**") as part of the contract documents, locating the position of the work, known utilities, obstructions and other improvements as closely as possible; however, during construction the actual location of the work may be changed. Changes in the location of the work shall not affect any of Subcontractor's obligations, duties or responsibilities under this Agreement or any Additional Work Amendment nor entitle Subcontractor to additional compensation unless the changed location materially affects the work, in which case Subcontractor shall promptly notify Builder of the condition and may submit an appropriate Change Order to Builder.

**4.2 Project Visit.** Subcontractor represents that before the execution of each Additional Work Amendment, it will avail itself of the opportunity to visit the project for the express purpose of examining the Project's physical characteristics, including without limitation, the general and local conditions bearing on, (1) accessibility to the project for vehicles, equipment, storage, and workmen and availability of parking for automobiles, trucks and motorized construction equipment; (2) character, quality, and quantity of surface and subsurface conditions; and (3) types and kinds of equipment and facilities required to perform the work under each Additional Work Amendment. Subcontractor further warrants and represents that it has compared its field measurements and investigations, and that all costs for the work are accurately and completely reflected in the Payment Schedule of the Additional Work Amendment.

**4.3 Review of Reports.** Maps, soils investigation reports and similar reference data ("**Reports**") have been made available for Subcontractor's information as part of the contract documents, and Subcontractor warrants that, prior to execution of any Additional Work Amendment, it has reviewed the Reports and taken them into account for all purposes. Subcontractor is solely responsible for determining whether the Reports contain sufficient information regarding the condition of the Project for purposes of performing the work, and failure to notify Builder in writing of any insufficiencies in the Reports prior to the commencement of work constitutes a waiver of any such insufficiencies. Builder assumes no responsibility for any conclusions which Subcontractor may draw from the Reports.

**4.4 Project Uncertainties.** Notwithstanding the obligations specified above for each project investigation, if there are any underground, man-made conditions affecting the project which are, (a) not related to the character or substance of the land, (b) not disclosed in the Reports, and (c) which Subcontractor did not and, as an experienced Subcontractor reasonably could not have known existed, and which materially affect its work, then within three (3) business days of the discovery of such condition, Subcontractor shall promptly notify Builder of the condition and may submit an appropriate Change Order to Builder.

**5. Safety.** Safety on each project is of the highest concern to Builder. Subcontractor shall, at its own expense, protect its employees and all other persons from risk of death, injury or bodily harm arising from or in any way related to its

work. Subcontractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of its work. Subcontractor shall provide written notice to Builder of the contact person responsible for Subcontractor's safety compliance for each project. Subcontractor shall immediately pay all fines or penalties assessed upon Subcontractor or Builder relating to its work. Subcontractor shall conduct daily inspections to determine that safe working conditions and equipment exist and safe practices are observed, and Subcontractor accepts sole responsibility for providing a safe place to work for its employees and the employees of all Subcontractors and material suppliers. Subcontractor shall immediately notify Builder's construction supervisors of any unsafe condition or practice observed at any project. Further, Subcontractor shall immediately notify Builder of any accidents or injuries at any project, even if not related to or caused by the performance of its own work.

**5.1 Safety Laws.** Subcontractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to all applicable California codes and statutes, the Williams-Steiger Occupational Safety and Health Act of 1970 and amendments thereto, and the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. § 1926.59 et seq., or similar laws, orders, rules, requirements or regulations (collectively, "Safety Laws").

**5.2 Dust Control.** Subcontractor acknowledges Builder may have obtained a "Dust Control Permit", and as a part of that permit has a "Dust Mitigation Plan" as per the requirements and conditions of Section 94 of the "Air Pollution Control Regulations" and by reference those requirements and conditions are made a part of this Agreement and any Additional Work Amendment.

**5.2.1** Subcontractor acknowledges it is familiar and aware of the dust control options specified in the "Dust Control Permit" and "Dust Mitigation Plan" and the contract price herein includes a monetary allowance for compliance of those conditions and requirements.

**5.2.2** It shall be the responsibility of the Subcontract to comply with all aspects of the "Dust Control Permit" and "Dust Mitigation Plan". Any corrective work required by a "Corrective Action Order" (CAO) issued as a result of work being performed by the Subcontractor shall be complied with immediately. Any "Notice of Violation" (NOV) issued as a result of work being performed by the Subcontractor shall be corrected immediately and any fines and/or penalties shall be solely the responsibilities of the Subcontractor.

**5.2.3** A current copy of the dust control plan for each project is available for Subcontractor's review upon request to Builder.

**5.3 Indemnity (Safety Violations).** Subcontractor shall promptly indemnify, protect, defend and hold harmless Builder and its affiliates and their members, officers, directors, shareholders, managers, agents and employees, from any liability, losses, costs, damages or expenses including attorneys' fees and costs, which such parties may incur as a result of any claims, causes of action, citations or work stoppages arising out of or in any way related to any alleged safety violation by Subcontractor, or any individual or entity acting on behalf of or at the direction of Subcontractor, of any Safety Law, or safety citation.

**5.4 Violation of Safety Laws.** If Builder finds Subcontractor, or any individual or entity acting on behalf of, or at the direction of, Subcontractor in violation of any Safety Law, notice shall be given to Subcontractor. If Subcontractor does not immediately commence to cure the violation and continue to cure the violation without delay, Builder may terminate for cause this Agreement and any Additional Work Amendment.

**5.5 Hazardous Materials.** Subcontractor shall not permit any hazardous substances to be brought onto or stored at any project or used in the construction of its work, except for commonly used construction materials; provided, however, that all such material shall be handled in full compliance with all applicable laws, ordinances and regulations and all notices required to be given with respect to such products shall be given by Subcontractor. Subcontractor shall not, nor allow any other person to, release or dispose of hazardous substances at any project or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which has been determined or is in the future determined by any state, federal or local governmental authority to be capable of posing a risk of injury to health, safety, property or the environment.

**5.6 Builder's "Zero Tolerance" Drug and Alcohol Policy.** Builder has a strict "Zero Tolerance" policy on all of its projects prohibiting at all times the presence of beer, wine or any other alcoholic beverage, or illegal drugs or substances on the job site. Any person found to be in violation of the "Zero Tolerance" policy shall be immediately

escorted from the project, and shall not be permitted to return to the project at any time thereafter for any reason. If Subcontractor allows its employees to bring alcohol and drugs to the project, Subcontractor shall be subject to the fines and penalties as provided below:

**5.6.1** Subcontractor shall at all times be responsible for preventing its employees from bringing alcoholic beverages or illegal drugs or substances on a job site in accordance with Builder's "Zero Tolerance" policy. If Subcontractor's employees are found on site with such beverages, drugs or substances, Subcontractor shall be subject to a two hundred fifty dollar (\$250) back charge penalty for each occasion or incident in which Subcontractor or its employees are found to be in violation of the policy.

**5.6.2** If Subcontractor, its employees or Sub-Subcontractors continue to violate the "Zero Tolerance" policy, Subcontractor shall be in breach of this Agreement and the Additional Work Amendment under which the work is being performed, and Builder reserves the right to terminate the same with Subcontractor "for cause" as defined by Section 24.

**5.6.3** In the event alcoholic beverages or illegal drugs or substances are found on the job site but the individual responsible for their presence cannot be identified, each Subcontractor present on the job site and working in the area where the alcohol or drugs were found will be subject to a two hundred fifty dollars (\$250) back charge penalty. Any Subcontractor can avoid being penalized by the acts of another subcontractor or its employees by identifying the employee responsible for bringing alcohol or illegal drugs or substances to the job site in violation of the "Zero Tolerance" policy.

**5.7 Job Site Requirements.** Builder requires that the rules listed below be followed and enforced by Subcontractor, its employees, and its sub-subcontractors, on each of its projects:

- (a) **No beer or alcohol on job site;**
- (b) **No drugs (or use of any illegal Substances);**
- (c) No dogs allowed on job site;
- (d) No loud music;
- (e) No glass bottles on job site;
- (f) Each trade is responsible for daily pick up of their trash;
- (g) No exposed nails in lumber;
- (h) Keep all debris off streets (including nails);
- (i) Construction speed limit is 10 mph;
- (j) Absolutely NO unauthorized people allowed on the job site, i.e. spouses, children or friends.

**5.8 Security.** Security on each project is of the highest concern to Builder and the Project Owner. As such, all of Subcontractor's supervisors, foremen, and employees shall, at all times wear identification badges for the purpose of readily and easily identifying persons authorized to be on site during the performance of work, whether during regular construction hours or at some other time. Said identification badges can be obtained from designated Builder's Safety Compliance Officer. In the event Subcontractor's supervisors, foremen, and employees are found to be on site without the appropriate identification badges, Builder reserves the right, in its sole discretion, to fine and/or back charge Subcontractor **fifty dollars (\$50.00)** per violation.

**6. Payment for Work.** Subcontractor shall be paid in accordance with **Exhibit A/Payment Schedule** for performance of the work contained within each Additional Work Amendment ("**Contract Payment**"). The prices, payment schedules and retention amounts, if any, are applicable to all work performed, including all repairs and warranty work. The Contract Payment includes all foreseen and unforeseen increases in costs, taxes, labor, materials, and transportation costs, all of which are to be borne by Subcontractor. All loss or damage arising from any work performed through difficulties or delays which may be encountered, or through weather conditions, shall be borne by Subcontractor. **The intent of Exhibit "A" is to completely cover the cost of the work to be performed and to make each Additional Work Amendment a "No Extra" contract.** The Contract Payment reflects the total payment due to Subcontractor, and Subcontractor shall pay all applicable sales taxes from such payment.

**6.1 Payment Requests.** All invoices requesting Contract Payment must be submitted in writing to Builder's business office no later than thirty (30) days from the performance of any work. No payment shall be due until Subcontractor submits to Builder (i) an invoice and/or Change Order for work completed, and (ii) Conditional/Unconditional/Final Mechanic's Lien Release Forms, as applicable, from all persons who might be entitled



to a mechanics' lien, stop notice or labor and material bond against the project relating to that portion of Subcontractor's work for which payment is being requested, and (3) Subcontractor's Federal W-9 form. Submission of any invoice or Change Order for payment shall constitute a confirmation by Subcontractor that all work included therein has been completed. Any invoice for work not completed as of the date of submittal by Subcontractor will be immediately returned by Builder, with no payment for the incomplete work. All submitted invoices approved by Builder will be paid within the statutory time period of seven (7) days following receipt by Builder from the Project Owner of monies received for the work of the Subcontractor as approved for payment by Builder, subject to: (1) the withholding of applicable retention as identified in each Additional Work Amendment; and (2) the withholding provisions provided in Section 6.3, below. Subcontractor acknowledges and agrees that a failure to submit its invoices within such thirty (30) day period may adversely impact Builder's business and result in costs to Builder or cause Builder to lose opportunities to increase revenue or decrease cost, which costs and damages will be borne by Subcontractor.

**6.2 Receipt of Funds From Owner or Project Lender.** Builder's obligation to pay Subcontractor for work performed under this Agreement or any Additional Work Amendment arises only after Builder and Project Owner accept and approve the payment request submitted by Subcontractor as provided in Section 6.1. Subcontractor hereby agrees that the obligation of Builder to make any progress payment or final payment to Subcontractor, or to pay for extra or changed work or any claim by Subcontractor, is timed upon the payment by the Project Owner to Builder for the Subcontractor's work. If the Project Owner or other responsible party (including project lender) delays in making any payment to Builder from which payment to Subcontractor is to be made, Builder (and its sureties) shall have a reasonable time to make payment to Subcontractor before Builder (or its sureties) are obligated to directly make payment to Subcontractor. Nothing in this provision shall limit, waive, or abridge Subcontractor's statutory and Constitutional Mechanic's Lien, Stop Payment Notice, or Bond rights, and Subcontractor agrees to exhaust such rights prior to seeking recovery from Builder (or its sureties). The parties expressly agree that a "reasonable time" shall be enough time for Builder (and its sureties) to complete its pursuit of legal remedies against the Project Owner or other responsible party to obtain payment, including, but not limited to, the pursuit of Mechanic's Lien, Stop Payment Notice, or Bond remedies.

**6.3 Withholding of Payments.** Builder may nullify, void or withhold payments, in whole or in part, in order to protect Builder and/or the Project Owner from loss because of:

- (a) Defective work not remedied, materials not furnished, clean-up not performed;
- (b) Claims filed or reasonable evidence indicating probable filing of claims (including claims covered by insurance, until such claims are accepted by the insurance carrier);
- (c) Failure of Subcontractor to make payments properly to its subcontractors and suppliers, or for labor, materials, equipment, transportation or shipping costs, taxes, fees, payments to labor unions and union trust funds, or other claims arising out of the work;
- (d) Reasonable doubt that the work can be completed for the unpaid balance of the Contract Price;
- (e) Damage to the work or materials of another subcontractor or Builder;
- (f) Reasonable indication that the work will not be completed on schedule;
- (g) Unsatisfactory prosecution of the work by Subcontractor;
- (h) Failure to deliver written guarantees or warranties;
- (i) Failure to obtain the approvals required by any authority having jurisdiction; and
- (j) Defaults which have not been cured by Subcontractor;

When the above grounds are removed by Subcontractor, the applicable amounts withheld (less costs incurred) shall be paid. Builder may require Subcontractor to furnish releases in a form satisfactory to Builder for all claims made under (b) and (c) above, together with supporting invoices, receipts or other records to substantiate the amounts owing or paid as Builder may require.

**6.4 Back Charges.** Builder shall have the right to back charge Subcontractor for any work performed by another subcontractor on the Project attributable to work incorrectly performed or omitted by Subcontractor, or the failure of Subcontractor to perform any other obligation or requirement under this Agreement. Builder shall provide in writing to Subcontractor the basis for and amount of any back charge. Subcontractor shall have fourteen (14) days thereafter to respond in writing to Builder objecting to the basis for or amount of the back charge claimed. If Subcontractor fails to object to any back charge within the time frame allowed, the back charge shall become immediately effective, due and payable on the fifteenth (15<sup>th</sup>) day following receipt of notice from Builder. If any such back charges are not paid by Subcontractor within thirty (30) days of original notification from Builder, such back charges shall incur an interest charge at the highest legal rate per annum until paid in full, in addition to a twenty percent (20%) administrative fee from Builder.

Builder shall have the right to offset any unpaid back charges and all accrued interest against any monies owed Subcontractor for the work or any other work on another project under contract with Builder.

**6.5 Title to Work.** Subcontractor warrants that title to all work, including all materials and equipment, will pass to Builder, either by incorporation in the construction or upon receipt of payment by Subcontractor, whichever occurs first, free and clear of all liens, claims, security interests, or encumbrances. Progress payments made for materials or equipment not yet incorporated into any project but accepted by Builder and suitably stored (on or off the project site) shall be made, if at all, in accordance with the Contract Documents. Subcontractor invoices itemizing respective quantities and unit costs of such stored materials or equipment shall accompany all payment applications for stored materials or equipment. At its option, Builder may make payment for stored materials or equipment by joint check to Subcontractor and the applicable supplier or lower-tier subcontractor, and as a condition precedent to any progress payment covering stored materials or equipment, Builder shall require a bill of sale, any necessary Uniform Commercial Code documentation, and proof of proper insurance furnished by Subcontractor and the applicable supplier or lower-tier subcontractor. Materials or equipment accepted by Builder and stored at Subcontractor's premises shall be: (1) fully insured; (2) segregated from other materials or equipment; and (3) clearly marked "Property of Pacific West Development, LP." Materials or equipment accepted by Builder and stored off site other than at Subcontractor's premises shall be: (1) stored in a bonded warehouse; (2) fully insured; (3) segregated from other materials or equipment; and (4) clearly marked "Property of Builder." Nothing in this Section shall relieve Subcontractor from the sole responsibility and liability for all material, equipment, and work upon which payments have been made until final acceptance of such material, equipment, and work by Builder. Further, until materials and equipment are incorporated into the project and accepted by Builder, such materials and equipment shall remain in the care, custody, and control of Subcontractor, and shall be stored at Subcontractor's risk, subject to the storage requirements above.

**6.6 Payment to Subcontractor/Sub-Subcontractors.** Unless otherwise agreed by Builder and Subcontractor, each progress payment and the final payment shall be made by Builder's check payable to Subcontractor. Builder shall not make payment directly to any sub-subcontractor or material supplier, except that Builder shall have the right to make joint checks payable to Subcontractor and the applicable sub-subcontractor or supplier performing the work for which payment is required if Subcontractor is in default under this Agreement or Builder has a reasonable belief that there is a possibility that Subcontractor will not pay or has not paid for such labor, materials, supplies, or equipment used or installed in connection with the Subcontractor's work. Subcontractor's failure to timely pay sub-subcontractor is a breach of this Agreement.

**6.7 Final Payment.** Final payment shall not be due until the work is fully completed and performed in accordance with the project's contract documents and is satisfactory to Builder, and Builder has received all required approvals from the Agencies. Acceptance by Subcontractor of the final payment of the Contract Payment shall constitute a waiver of all claims against Builder under this Agreement, but shall not release Subcontractor from the indemnity provisions set forth in this Agreement (Section 13), or from liability for warranties and warranty service and/or defective work.

**6.8 Payments By Builder Do Not Constitute Acceptance of Work.** No certificate issued or payment made prior to completion and acceptance of its work shall be construed as evidence of acceptance by Builder of any part of Subcontractor's work, or be deemed a waiver by Builder of full compliance with this Agreement.

**6.9 Disputes.** In the event of any good faith dispute arising from Subcontractor's work, Builder may withhold up to 150% of the disputed amount. In the event of such a dispute, including disputes over payment and change orders, Subcontractor shall not cause or permit any delay or cessation of the work under any Additional Work Amendment, or cause delay or disruption of the work of any other subcontractor or contractor on the project, but shall proceed with the performance of the work in accordance with the Additional Work Amendment.

**7. Changes in the Work.** Builder shall have the right to order changes in the work at any time during the project. If Builder orders changes in or to the work, the Contract Payment shall be adjusted accordingly, and the construction schedule may be adjusted, if necessary. All such changes in the work shall be authorized by a "Change Order." Ordinary field modifications which do not substantially increase Subcontractor's cost of the scope of work shall be performed without any price adjustment. Subcontractor shall not perform any changes in the work without a prior written Change Order from Builder bearing a complete description of the scope of work to be performed under the Change Order, the full costs of changes in the work and signed by Builder's designated representative before the commencement of said change in work.

**7.1 Change Order.** A Change Order is considered an amendment to this Agreement and the Additional Work Amendment regarding a particular project, but only effects a change with respect to the Contract Payment, scope of work and construction schedule. Only an authorized agent of Builder can execute a Change Order to the Agreement

or any Additional Work Amendment. Daniel R. Dobron and Andrew J. Dixon are the only authorized agents that can bind the Builder to additional costs. Builder's superintendents, project managers, or any other Builder employee do not have any authority to sign on behalf of Builder or obligate in any way the payment of additional monies to the original Contract Payment. If changes to the construction schedule or scope of work result in an addition to the Contract Payment, that increase must be specifically included in the Change Order or it will not be paid. Once signed, the terms set forth in a Change Order shall fully dispose of all claims by Subcontractor for any adjustment to the Contract Payment and construction schedule as a result of the extra work referenced therein. Subcontractor agrees to submit a written Change Order request to Builder on the day of the occurrence of the event giving rise to the change. Subcontractor's failure to strictly comply with this provision shall be deemed a waiver of Subcontractor's right to assert any such claim for extras or increased material costs.

**7.2 Change Order Proposal.** To initiate a Change Order, Builder will issue a request for proposal to Subcontractor. Immediately upon receipt thereof, Subcontractor shall prepare and submit a proposal to Builder. The proposal shall contain a quantity survey including quantity calculations, area calculations, unit prices, labor hours, labor rates and any other information necessary to provide Builder with a comprehensive undertaking of the proposal and the effect of the change on the project's construction schedule. Once agreed upon by Builder and Subcontractor, Builder shall send to Subcontractor a change order with all information agreed to be included. Subcontractor shall promptly execute change order and immediately send it to Builder. Builder's authorized agent(s) shall then dully execute the change order and then send a fully executed copy of the change order to the subcontractor.

**7.3 Time and Materials.** If Subcontractor and Builder cannot agree upon a price for extra work, Builder shall have the right to direct Subcontractor to perform the extra work on a 'time and materials' basis. Payment for 'time and materials' work shall be based on: (a) the actual cost of materials used at current market prices; (b) actual labor used at current labor rates, (c) actual cost of equipment used at agreed rental rates, and (d) to the sum of (a) and (b) above, add ten percent (10%) for Subcontractor's overhead and profit. No payment shall be due for any 'time and materials' work, however, unless all material, equipment and labor used have been verified by daily tickets duly signed as accepted by Builder's representative.

**8. Liens.** So long as Subcontractor is not in default, payments will be made for work completed in accordance with California law at the times and in the amounts set forth below:

**8.1 Lien Claims.** At all times during the performance of work by Subcontractor, Builder shall be entitled to hold any allowable retention and any statutory sums in accordance with the laws of California for all work in progress. If any lien claim remains outstanding or arises after payments of amounts owed to Subcontractor by Builder, within ten (10) days after written demand from Builder, Subcontractor shall either (i) procure a bond to indemnify Builder and any purchaser of a unit in the project against such lien, or (ii) immediately refund to Builder all monies, including any additional amount necessary to cover all of Builder's attorneys' fees and court costs paid in discharging the lien. Builder shall elect either such remedy in its sole and absolute discretion. If any lien(s) remains unsatisfied after payments of amounts owed to Subcontractor are made, Builder may retain up to one hundred fifty percent (150%) of the amount of the lien(s) until Subcontractor has caused all liens to be released in accordance with this provision.

**8.2 Mechanic's Lien by Subcontractor.** Nothing herein shall operate to waive or restrict Subcontractor's statutory right under California law to file or record a mechanic's lien against the project for which a work of improvement has been or materials supplied.

**8.3 Writ of Attachment/Levy.** In the event Builder or the Project Owner is served with any Writ of Attachment, Writ of Execution, Notice of Levy (Federal or State), or other legal process for any debt or alleged debt of Subcontractor at any time during Subcontractor's work prior to completion, Builder shall automatically be entitled to keep and retain any funds or monies then due Subcontractor for work and materials furnished and/or previously billed and approved but unpaid to Subcontractor. It is understood and agreed that the purpose of the preceding sentence is to guarantee that Builder and the Project Owner shall have sufficient funds with which to complete Subcontractor's duties under this Agreement or any Additional Work Amendment if the suit or levy out of which the above legal process arose should, in Builder's opinion, make it difficult or impossible for Subcontractor to finish its work. Service upon Builder of such process shall be deemed a breach of this Agreement, and Builder shall give Subcontractor five (5) days' written notice to remove said levy. Subcontractor's failure to do so shall entitle Builder to the same rights as set forth in Section 24 of this Agreement.

**9. Independent Contractor Status.** Subcontractor is an independent contractor and no other relationship between Builder and Subcontractor exists. At no time shall Subcontractor be deemed a partner, agent, employee, member or manager of Builder or any Project Owner.

**9.1 Subcontractor's Employees.** Subcontractor assumes responsibility and shall be liable to Builder for all acts and omissions of the Subcontractor's agents and employees, all sub-subcontractor and their agents and employees, and other persons performing portions of the work under a contract with the Subcontractor. All personnel used by Subcontractor in the performance of its work shall be qualified to perform their assigned tasks. Subcontractor further agrees to provide written notification to all of its present and future employees of Subcontractor's provision for Workers' Compensation insurance.

**9.2 Taxes.** Subcontractor acknowledges that this is a lump sum contract and that Subcontractor shall be solely responsible for all withholding, Social Security, State unemployment and other similar taxes for Subcontractor's employees, agents or permitted sub-subcontractor. In addition, Subcontractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the work. Subcontractor's allocated taxes will not be collected for nor paid by Builder.

**10. Discipline.** Subcontractor shall at all times enforce strict discipline and good order among its agents, employees and sub-subcontractor. Any person adjudged by Builder in its sole discretion to be incompetent, disorderly, or otherwise unsatisfactory shall be immediately and permanently removed from the project on which Subcontractor is performing work.

**11. Warranties.** In addition to all other expressed or implied warranties, Subcontractor warrants that (i) all materials and equipment furnished shall be new, unless otherwise expressly required or permitted by this Additional Work Amendment, and of the best quality within the scope of the bid and free from defect and faults, (ii) all workmanship and services furnished will be of the best quality within the scope of the bid, free from faults and defects, (iii) its workmanship and materials are in full accordance with the one (1) warranty provided by Builder and the Project Owner to homeowners, which Subcontractor has read, understands and by which Subcontractor agrees to be bound, and (iv) all work shall be in strict conformance with the requirements of the Contract Documents and all applicable Agencies and Codes. At Builder's request, Subcontractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. All work not conforming to all of Subcontractor's express and implied warranties, including substitutions not approved and authorized by Builder, is "Defective Work". Subcontractor shall promptly repair and make good all Defective Work in accordance with this Agreement. Subcontractor's obligation to repair and correct its work or respond to warranty claims as may be necessary shall be triggered upon the performance of its work, and the failure of Owner and/or the project lender to disburse funds to Builder in which to pay Subcontractor for its work under this Agreement shall not act to relieve Subcontractor of the obligation to repair and correct and warranty its work within the period established by this Agreement.

**11.1 Assignment of Warranties.** Upon final completion of the work, Subcontractor agrees to assign to Builder and the Project Owner any and all manufacturer's warranties relating to its work.

**11.2 Deliveries to Subcontractor.** Prior to completion of its work, Subcontractor will provide to Builder all documents prepared by or on behalf of or by Subcontractor, including all manufactured products' maintenance, preventative maintenance, and limited warranty information. Subcontractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment and shall furnish all certificates required to the Project Owner and Builder for assignment to third parties.

**11.3 Call Back Responsibility.** For the greater of the applicable period after the Close of Escrow specified in any applicable law, ordinance, administrative rule or guideline, or development agreement or other similar agreement or document related to the project, or, the applicable period after the Close of Escrow specified in any written warranty provided by Builder ("**Warranty Period**"), but in no event shorter than one (1) year from the date of first occupancy of the residential unit by any third party after purchase, Subcontractor shall correct any Defective Work ("**Corrective Work**") promptly upon receipt of notice from Builder ("**Notice of Defect**"). Subcontractor shall schedule the Corrective Work within seventy two (72) hours after receipt of the Notice of Defect from Builder and shall commence corrective work not later than seven (7) days after receipt of the Notice of Defect, except in an emergency, in which case Subcontractor shall commence Corrective Work within four (4) hours, and Subcontractor shall diligently and continuously complete the Corrective Work to the reasonable satisfaction of Builder. If Subcontractor fails to commence or diligently and continuously complete the Corrective Work in accordance with this provision, Builder shall have the right, but not the obligation, to perform the Corrective Work. If Builder performs the Corrective Work, immediately upon demand Subcontractor shall reimburse Builder the full cost of such Corrective Work, plus twenty percent (20 %) for Builder's overhead and administration costs. Builder's Customer Service Representative will sign off on the contracted retention when all Corrective Work has been completed. Subcontractor shall be responsible for maintaining all scheduled appointments. If any appointment with a homeowner or customer service representative is missed or cancelled by Subcontractor within twenty four (24) hours of the scheduled appointment time, there will be a one hundred dollar (**\$100.00**) fee levied against

Subcontractor. Such fee may be waived by Builder in its sole discretion if Subcontractor reschedules the appointment more than twenty four (24) hours before the scheduled appointment time. To ensure that Builder is able to reach Subcontractor in the event of an emergency requiring immediate Corrective Work, Subcontractor must provide an emergency telephone number, which Subcontractor represents and warrants shall be answered twenty four (24) hours a day, seven (7) days a week. Subcontractor's obligation to repair and correct its work or respond to warranty claims as may be necessary shall be triggered upon the performance of its work, and the failure of Owner and/or the project lender to disburse funds to Builder in which to pay Subcontractor for its work under this Agreement shall not act to relieve Subcontractor of the obligation to repair and correct and warranty its work within the period established by this Agreement.

**11.4 Right to Repair Act.** Subcontractor agrees to cooperate with Builder in connection with any matters relating to the California Right to Repair Act (SB800), including, without limitation, at Builder's request, (i) providing copies of all applicable documents described in Section 912 of the Right to Repair Act, and (ii) participating in the non-adversarial procedures set forth in Sections 910 through 938 of the Right to Repair Act, including attending any inspections and providing destructive testing services and/or repair services in connection therewith ("**Non-adversarial Procedures**"), at Subcontractor's sole cost and expense. If Subcontractor fails or refuses to participate in any Non-adversarial Procedures, Builder will have the right to correct any Defective Work or non-conforming work ("Corrective Work"), and Subcontractor shall, upon demand, immediately reimburse Builder the full cost of such Corrective Work (which shall include the cost of any destructive testing services that Subcontractor is obligated to perform under this Section), plus twenty percent (20%) for Builder's overhead and administration costs. Builder shall also be entitled to recover reasonable attorney's fees and costs incurred in responding to a claim made pursuant to the Right to Repair Act. If the owner of any unit within the project or any homeowners association for the project elects to have any Defective Work repaired by a contractor other than Subcontractor pursuant to the Right to Repair Act, then Subcontractor shall, upon demand, immediately reimburse Builder the full cost of such Corrective Work as charged by said owner. Subcontractor's obligation to repair and correct its work or respond to warranty claims as may be necessary shall be triggered upon the performance of its work, and the failure of the Project Owner and/or the project lender to disburse funds to Builder in which to pay Subcontractor for its work under this Agreement shall not act to relieve Subcontractor of the obligation to repair and correct and warranty its work within the period established by this Agreement. Further, in addition to the dispute resolution procedure in Section 19 of this Agreement, which governs any claims, disputes, and controversies between Builder and Subcontractor not involving home buyers or homeowners associations for a project (if any), Subcontractor further agrees to comply with all dispute resolution provisions agreed upon by and between Builder and the Project Owner or otherwise as required by law governing any claim, dispute, or controversy relating to or arising out of the work, which involves a claim asserted by a home buyer or by a homeowners association for a project. Subcontractor acknowledges that in connection with residential projects, Builder may adopt or enter into with the Project Owner or the home buyers additional agreements or obligations to comply with California Civil Code Sections 895 et seq. or other applicable law. Subcontractor acknowledges and agrees that any and all claims, disputes, and controversies between or among any home buyer, homeowners association, Builder, and Subcontractor will be subject to the terms and conditions set forth in such agreements, if any, and Subcontractor agrees to be bound by and participate in any and all dispute resolution procedures, provisions, and requirements set forth in such agreements, at Builder's sole discretion

**11.5 Miscellaneous.** The performance/fulfillment of any warranty repair responsibilities by Builder or any other third party under this Agreement or applicable law will not affect, minimize or in any way obviate Subcontractor's warranty obligations, Subcontractor's indemnity provided for herein, or the ability of Builder to request Subcontractor to perform warranty services in the future. Subcontractor shall be responsible for enforcing any and all warranties given by its sub-subcontractors, suppliers or manufacturers. All warranties and guarantees pursuant to this Section 11 are in addition to any special warranty contained in the contract documents or available under applicable California law. Further, all such guaranties and warranties shall inure to the benefit of Builder's successors and assigns, the third-party purchasers of the units and the homeowners association for the project, if any. The obligations under this Section 11 shall survive both final payment for Subcontractor's work and the expiration or termination of this Agreement. Any failure to correct Defective Work pursuant to this Section 11 shall constitute a breach of this Agreement. Subcontractor shall insert the terms of this Section 11 in all sub-subcontractors and/or agreements executed in connection with the work to be performed under this Agreement and shall pass such provision to its sub-subcontractors. The foregoing is in addition to all other warranties or obligations of Subcontractor provided by law or otherwise and not in limitation of periods of applicable statutes of limitation.

**12. Subdivision Rules.** Subcontractor shall comply fully with all rules, regulations and restrictive covenants governing the subdivision in which the work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that work may be performed; (ii) governing storage of materials on the job location; and (iii) regulating trash pick-up and waste collection at the job location.

**13. Indemnity and Defense of Builder and Project Owner.** Subcontractor shall indemnify, defend and hold harmless Builder, Project Owner and their officers, agents, employees and joint venture partners as follows:

**13.1 Residential Projects.**

**13.1.1 Third Party Construction Defect/SB 800 Claims.** In connection with the performance of the work under this Agreement and any subsequent Additional Work Amendment, and to the fullest and broadest extent permitted by law, Subcontractor shall promptly indemnify, defend and hold harmless Builder and each Project Owner, and their officers, agents, employees and joint venture partners, from and against any and all third party construction defect claims, losses, damages, demands, suits, injuries and liabilities (regardless of legal theory alleged, and including any claims made pursuant to California *Civil Code* Section 895 et seq. (SB 800)) arising from or relating to (1) any failure by Subcontractor to perform its obligations under this Agreement, Additional Work Amendment or contract documents, (2) any failure by Subcontractor to perform its work in a good and workmanlike manner, free of defect, and in accordance with accepted and applicable building industry standards and codes, (3) any failure by Subcontractor in the performance of its work resulting in any condition or “actionable defect” as defined in California *Civil Code* Section 896, and (4) any damage, loss of use of, loss of income from, or destruction of any property, however caused, suffered by any third party, Builder and/or Project Owner and their officers, agents, employees and joint venture partners, including all costs of litigation, mediation, arbitration and attorney’s fees, arising out of or relating to the work performed by Subcontractor.

**13.1.1.1** Pursuant to California *Civil Code* Section 2782, the scope of indemnity to be provided by Subcontractor for any construction defect claim does not apply to any portion or any defect claims, losses, damages, injuries and liabilities arising from or relating to the negligence of Builder and/or Project Owner, and does not include those damages, claims or damages arising out of Builder’s and/or Project Owner’s negligence. Otherwise, the parties intend Section 13.1.1 to be interpreted as the broadest indemnity provision provided for under California law in favor of Builder and Project Owner.

**13.1.1.2** With respect to any claim made pursuant to California Civil Code Section 895 et seq. (SB 800), Subcontractor’s agreement to perform to any correction or repair to its work shall not relieve it of the defense obligation to Builder and/or Project Owner. Subcontractor shall remain liable to Builder and/or Project Owner for its proportionate share of liability of the claimed defects and damages of any defense fees and costs incurred by Builder and/or Project Owner in investigating and responding to any such claim. The cost of defense attributed to Subcontractor shall be equal or approximate to its proportionate share of liability to any third party for the alleged defects and damages attributable to the work performed under this Agreement.

**13.1.2 All Other Claims or Losses on Residential Projects.** With the exception of those claims or matters identified in Section 13.1.1 arising from construction defects, Subcontractor shall, to the fullest extent permitted by law, indemnify, defend and hold harmless Builder and Project Owner and their officers, agents, employees and joint venture partners from and against all other types and kinds of claims, losses, damages, demands, suits, injuries and liabilities (regardless of legal theory alleged), including all costs of litigation, mediation, arbitration and attorney’s fees, arising from or relating to (1) any failure by Subcontractor to perform its obligations under this Subcontract Agreement, (2) any damage suffered by Builder and/or Project Owner and their officers, agents and employees relating to the work performed by Subcontractor, (3) the death of or injury to any person, or the damage to, or, loss of use of, loss of income from, or destruction of any property, however caused, relating to the work performed by Subcontractor, or (4) Subcontractor’s use of Builder’s equipment, labor or facilities regardless of whether (a) Builder shall have consented to such use, or (b) the death, injury or damage shall have been caused by unsafe conditions. Subcontractor’s obligation to indemnify, defend, and hold harmless Builder and Project Owner under this Section 13.1.2 applies regardless of any active or passive negligence by Builder (or its officers, agents and employees) or any passive negligence by the Project Owner (or its officers, agents and employees), but shall not apply to the sole negligence or willful misconduct of Builder or Project Owner.

**13.1.3 Right to Indemnity and Defense.** The duty and obligation of Subcontractor to defend the Builder, Project Owner and officers, agents, employees and joint venture partners herein shall arise immediately upon the Subcontractor’s receipt of notice of any such claim asserted against Builder and/or the Project Owner, and/or Subcontractor by any third party, and the communication of the same by Builder and/or the Project Owner to Subcontractor, pursuant to the notice requirements provided by this Agreement. A finding of negligence or the proving of liability on behalf of Subcontractor in the performance of its work shall not be a pre-requisite or required condition to trigger Subcontractor’s immediate duty and obligation to defend Builder and Project Owner. Upon receipt of the tender of the defense and indemnity

of Builder and Project Owner, Subcontractor shall within forty-eight (48) hours communicate to Builder, or its designated counsel of record, (1) receipt, acknowledgment and acceptance of the tender of defense, and (2) shall pay promptly when due and as incurred all attorneys' fees and costs, including all expert fees and costs of litigation, generated in the defense of Builder and Project Owner, as to the entire action and including bonds and the costs of appeal. No obligation of Subcontractor to Builder and Project Owner shall be lessened, reduced, delayed, or affected by the existence of other potential or actual indemnitors or insurers, or by Subcontractor's rights against any third party to contribution, subrogation, or pro-ration.

**13.2 Non-Residential Projects.** In connection with the performance of the work under this Agreement and any subsequent Additional Work Amendment on any non-residential project, and to the fullest and broadest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Builder and Project Owner, and their officers, agents, employees and joint venture partners, as set forth in Section 13.1.2, above, except that in addition to the exclusions identified in Section 13.1.2, above, Subcontractor also shall not be obligated to indemnify or defend Builder against claims arising from Builder's active negligence. In addition, Subcontractor's defense obligation shall comply with California Civil Code section 2782.05.

**13.3 Release and Waiver of Claims.** To the fullest extent permitted by law, neither Builder nor the Project Owner, or their officers, agents, employees or joint venture partners, shall be liable to Subcontractor for death of or injury to any person, or damage to or loss of use of, loss of income from, or destruction or any property, from any cause during the performance of Subcontractor's work (including without limitation fire, earth settlement, earthquake, theft, embezzlement, riot, or civil commotion). Subcontractor hereby releases and waives Builder and each Project Owner and their officers, insurers, agents and employees therefrom, from all such claims against Builder and/or each Project Owner and/or their officers, insurers, agents and employees.

**13.4 General Requirement.** Subcontractor's obligations to indemnify, defend, and hold harmless Builder and Project Owner under this Section 13 shall not in any way be limited by Subcontractor's insurance obligations or requirements, or by a restriction on the amount or type of damages, compensation, or benefits payment by or for Subcontractor under workers' compensation, disability, or other laws or regulations. Subcontractor's indemnity and defense obligations shall extend to all claims, losses, damages, demands, suits, injuries, and liabilities occurring at any time during performance or after completion of the work, even if the Additional Work Amendment or this Agreement is terminated. Payment by Builder is not a condition to enforcing Subcontractor's indemnity and defense obligations.

#### **14. Insurance.**

**On those projects subject to an Owner Controlled Insurance Program (OCIP), the following insurance requirements shall apply to Subcontractor:**

**14.1** Subcontractor shall refer to and comply with **Exhibit E/Owner Controlled Insurance Program** to the Additional Work Amendment prior to the commencement of any work on any of Builder's projects. Subcontractor understands and acknowledges it is required to enroll in the OCIP, and to pay a portion of the coverage premium prior to the commencement of any work at any project. Subcontractor is required to provide copies of the Subcontractor's liability insurance declaration and rate pages. In addition to its participation in the OCIP, Subcontractor agrees to procure and maintain during the time of performance of any work for Builder the additional insurance coverages set forth below:

**14.1.1 Commercial General Liability.** In addition to the requirement for enrollment and participation in the OCIP coverage provided Builder and the Project Owner, for all offsite work and other activities of Subcontractor related to the performance of work not actually performed on the project which is not covered by the OCIP, or in the event of claim, loss, damage or other event attributable to the work of Subcontractor which is otherwise not covered by the OCIP Policy, Subcontractor shall at all times during the performance of its work procure and maintain Broad Form Commercial General Liability Insurance on an Occurrence Form, containing a per occurrence limit of no less than one million dollars (\$1,000,000), and an aggregate limit of no less than two million dollars (\$2,000,000.00) protecting against bodily injury, property damage, personal injury, products, and completed operations claims arising from the exposures arising from and/or relating to all of Subcontractor's off site work and activities.

**14.1.2 Worker's Compensation.** Worker's Compensation Insurance that provides statutorily required benefits and coverage such that Builder will have no liability to Subcontractor's personnel, employees or agents, and Employer's Liability insurance in an amount not less than one million dollars (\$1,000,000) for each accident for bodily injury, one million dollars (\$1,000,000) policy limit for bodily injury by disease and one million dollars (\$1,000,000) for each employee for bodily injury by disease. Worker's Compensation Insurance is required regardless of the number of

employees. All such insurance shall contain express waivers and endorsements providing that each insurance underwriter waives all of its rights of recovery by subrogation, or otherwise, against Builder, any lender on each project, the Indemnitees, and any of their consultants, and Subcontractor's agents, employees and representatives.

**14.1.3 Automobile Liability.** Commercial Automobile Liability Insurance coverage with limits of not less than a combined single limit of one million dollars (\$1,000,000) per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

**14.1.4 General Requirements.** All insurance coverages required herein shall be carried continuously during the time of performance of any work with insurance companies acceptable to Builder, in its sole and absolute discretion. The amounts and types of insurance set forth herein are the minimums required by Builder and shall not be substituted for an independent determination by Subcontractor of the amounts and types of insurance which Subcontractor shall determine to be reasonably necessary to protect itself and the its work.

**14.1.5 Certificates of Insurance.** Prior to beginning any work on any project, Subcontractor shall provide evidence that such insurance is in full force by furnishing Builder with a Certificate of Insurance, or certified copies of the above policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall not be subject to cancellation, nonrenewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Builder.

**14.1.6 Withholding of Payment Due to lack of Insurance.** Notwithstanding the foregoing, if Subcontractor fails to provide Builder evidence of insurance required hereunder, Builder shall be entitled, but shall not be obligated, to withhold from Subcontractor amounts otherwise payable to Subcontractor for its work in an amount established by Builder, in its sole and absolute discretion, necessary to pay the cost of insurance associated with Subcontractor's personnel, employees or agents under Builder's worker's compensation and/or general liability insurance, as well as an administrative fee for permitting such coverage, such withholding being expressly acknowledged and authorized by Subcontractor's execution of this Agreement and any Additional Work Amendment providing for the work.

**14.1.7 Subrogation.** Subcontractor and its insurers hereby waive, release and discharge all rights of recovery by subrogation or otherwise (including, without limitation, claims relating to deductible clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Builder, each Project Owner or any lender on the project, the Indemnitees, and any of their consultants, Subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

**On those projects where an Owner Controlled Insurance Program is not available or otherwise provided by the Builder, the following insurance requirements shall apply to Subcontractor:**

**14.2** Subcontractor shall not commence any work on any project until it obtains all forms of insurance as set forth below. Builder will not permit Subcontractor to commence any portion of the work on any project until Subcontractor has complied with all of the insurance requirements described in this Section 14.2.

All Insurance described under this Section 14.2 to be carried by Subcontractor will be maintained by Subcontractor at its sole expense with insurance carriers licensed and approved to do business in California, having a general policyholders rating of not less than an "A-" and financial rating of not less than "VIII" in the most current Best's Key Rating Guide. In no event will such insurance be terminated or otherwise allowed to lapse prior to termination of this Agreement or any Additional Work Amendment, or such longer period as may be specified herein. Should Subcontractor fail in whole or in part to comply with any of the requirements set forth in this Section 14.2, such a failure shall be deemed a material breach of this Agreement, thereby entitling Builder to all available legal remedies. Subcontractor may provide the insurance described in this Section 14.2 in whole or in part through a policy or policies covering other liabilities and projects of Subcontractor; provided, however, that any such policy or policies shall: (a) allocate to the project the full amount of insurance required hereunder, and (b) contain, permit or otherwise unconditionally authorize the waiver contained in Paragraph 14.2.6 of this Section 14.2.

**14.2.1 Commercial General Liability Insurance.** At all times during the performance of all on site and offsite work on any project for Builder, Subcontractor shall maintain Comprehensive or Commercial General Liability Insurance on an "occurrence basis, with reasonably acceptable deductibles, not to exceed \$25,000, with a combined



single limit for bodily injury and property damage of One Million Dollars (\$1,000,000), or limit carried whichever is greater, covering Operations, Independent Subcontractors, Products and Completed Operations (for 10 years after Final Acceptance), Contractual Liability specifically covering the indemnification contained in Section 13 of the Agreement, Broad Form Property Damage including Completed Operations, Severability of Interest and Cross Liability clauses, Prior Acts Exclusion stating the General Liability policy shall not include any limitation of coverage and/or exclusion including but not limited to Prior Acts Exclusion and/or condominium/detached housing exclusion, Personal Injury and Explosion, Collapse and Underground Hazards (X,C,U). The limits of liability specified in this paragraph may be provided by any combination of primary and excess liability insurance policies. **In the form required by Paragraphs 14.2.7 and 14.2.8 below, Subcontractor shall name Builder and the Project Owner as additional insureds on all such policies in effect during the performance of work at the project.**

**14.2.2 Workers' Compensation Insurance.** Subcontractor shall maintain Workers' Compensation Insurance, including (a) Employer's Liability at a minimum limit of One Million Dollars (\$1,000,000) for all persons whom it employs in carrying out the work under this Agreement. Such insurance shall be in strict accordance with the requirements of the most current and applicable Workers' Compensation Insurance Laws in effect from time to time at the project site.

**14.2.3 Automobile Liability Insurance.** Subcontractor shall maintain any and all owned, hired and non-owned automobile liability insurance covering all use of all automobiles, trucks and other motor vehicles utilized by Subcontractor in connection with this Agreement with a combined single limit for bodily injury and property damage in an amount in compliance with of the minimum limits required by the State of California.

**14.2.4 Evidence of Insurance.** As evidence of insurance coverage specified by this Section 14.2, Subcontractor shall deliver to Builder copies of certificates of insurance and endorsements issued by Subcontractor's insurance carrier(s) showing all such policies in force for the period of time for the performance of work at any project. Builder reserves the right to require Subcontractor to submit for Builder's review certified policies of insurance. Such evidence of insurance shall be attached by Subcontractor as **Exhibit "E"** to the Additional Work Amendment and shall be delivered to Builder's corporate office promptly upon execution of this Agreement or prior to commencement of work, whichever occurs earlier. Each policy and certificate shall be subject to approval by Builder, and shall provide that such policies shall not be subject to material alteration to the detriment of Builder or Subcontractor or cancellation without thirty (30) days' notice in writing to be delivered by registered mail to Builder's corporate office. In the cancellation section of the Certificate of Insurance, the Subcontractor shall delete the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the Company, its agents or representatives." Should any policy expire or be canceled before the completion of the work under this Agreement or any Additional Work Amendment, and Subcontractor fails immediately to procure other insurance as specified, Builder reserves the right, but shall have no obligation, to procure such insurance and to deduct the cost thereof from any sum due Subcontractor (or withhold said payments) under this Agreement or any Additional Work Amendment.

**14.2.5 Damages.** Nothing contained in these insurance requirements is to be construed as limiting the type, quality or quantity of insurance Subcontractor should maintain or the extent of Subcontractor's responsibility or liability for payment of damages resulting from its operations under this Agreement. The carrying of the insurance as specified herein shall not be construed to be a limitation of liability on the part of Subcontractor, nor shall it relieve Subcontractor from any liability to Builder as a matter of law.

**14.2.6 Waiver of Subrogation.** Subcontractor hereby waives all rights against Builder and each Project Owner for damages caused by fire and other perils and risks to the extent covered by Subcontractor's required policies of insurance. All policies of insurance required herein shall contain a provision under which the insurance carrier waives its right of subrogation with respect to Builder and each Project Owner and such other parties specifically listed as additional insureds in Paragraph 14.2.7 below.

**14.2.7 Additional Insureds.** With respect to the insurance required pursuant to Paragraph 14.2.1 above, Subcontractor shall undertake all necessary efforts and expense to name Builder and each Project Owner as additional insureds under all policies of Commercial General Liability insurance in existence during the performance of work on each project, providing coverage for both on site and off site work and activities. Builder will only accept Additional Insured Endorsements on CG 20 10 11/85 forms (or any other form designated by and acceptable to Builder), with language providing for coverage for "all completed operations" by Subcontractor. Unless otherwise provided, Builder and each Project Owner shall be specifically included and identified as additional insureds on any such policies in effect or procured during the time of Subcontractor's work on the Project.

**14.2.8 Primary Endorsement.** With respect to the Additional Insured Endorsement to be provided to Builder and each Project Owner pursuant to Paragraph 14.2.7, the following language must be included on the additional insured endorsement: *“This Insurance is primary and any other insurance maintained by such additional insureds is noncontributing with this insurance with respect to claims or liability arising out of or resulting from the acts or omissions of the named insured, or of others performed on behalf of the named insured.”*

**14.2.9 Relationship of Coverage.** Subcontractor’s insurance shall be considered primary to any policies held or procured by Builder and/or the Project Owner for the project, and Builder/Project Owner’s policies shall be considered excess to Subcontractor’s policies. Further, the insurance required pursuant to this Section 14.2, shall, as far as applicable, specifically insure Subcontractor’s obligations pursuant to Section 13 (Indemnity), and all other contractual obligations under this Agreement, and in particular and without limitation, the liability insurance required pursuant to this Section 14.2 shall insure Subcontractor’s obligations pursuant to Section 13. However, Subcontractor’s indemnity and defense obligations pursuant to Section 13 shall not be limited to the amount of insurance required of or carried by Subcontractor pursuant to Section 14.2.

**14.2.10** If Builder fails to enforce any of these insurance requirements during the performance of the work by Subcontractor, such failure shall not constitute a waiver of such requirements, nor shall any waiver of any provisions hereof be effective unless made in writing and signed by Builder’s “Authorized Representative.”

**14.2.11** Prior to commencement of any work on any project, Subcontractor acknowledges and understands it shall, at its sole expense, fully comply with the terms of this Section 14.2.

**15. Bonding.** Builder, in its sole discretion, may require Subcontractor to obtain performance and payment bonds for any Additional Work Amendment. If an Additional Work Amendment requires such bonds, Subcontractor shall furnish a 100% (of the Additional Work Amendment Price) performance bond and a 100% (of the Additional Work Amendment Price) labor and materials payment bond (including a power of attorney for each bond) on bond forms provided by Builder. Said bonds shall be executed by a corporate surety acceptable to Builder that must have a rating of “A” or better in the current A.M. Best rating Guide of Property/Casualty Insurance Companies. Surety shall be jointly and severally bound with Subcontractor to all terms and conditions of the Additional Work Amendment and this Agreement. If an Additional Work Amendment does not require bonds, Builder may, in its sole discretion, require Subcontractor to provide a Personal Guarantee.

**16. Sub-Subcontractors.** No work may be subcontracted without the prior written approval of Builder, which reserves the right to disapprove any proposed sub-subcontractor whose record does not establish, in Builder’s sole judgment, the experience, competence and financial ability of the sub-subcontractor to perform the applicable portion of Subcontractor’s work. Notwithstanding Builder’s approval of any sub-subcontractor, Subcontractor shall remain fully liable to Builder for performance of its work, including the portions subcontracted. Nothing contained in this Agreement shall create any contractual relationship between any sub-subcontractor or supplier and Builder, or create any obligation on the part of Builder to make payment of any sums to any sub-subcontractor or supplier, or any other party not directly contracting with Builder.

**16.1 Sub-Subcontract Agreements.** Subcontractor shall provide to each proposed sub-subcontractor, prior to execution of any sub-subcontract, a copy of this Agreement and the applicable Additional Work Amendment. Subcontractor shall, as a condition to receiving Builder’s approval of any sub-subcontractor, require the sub-subcontractor to be bound in writing by the provisions of this Agreement that apply to sub-subcontractor. In addition, all sub-subcontracts shall contain the following sentence: “Builder is an intended third party beneficiary of this subcontract.”

**16.2 Assignment of Sub-Subcontract.** Subcontractor shall unconditionally assign its interest in the contract documents for each project to Builder, which assignment shall automatically become effective upon Builder’s approval and consent to said assignment.

**16.3 Indemnity.** If Subcontractor subcontracts any of its work, Subcontractor guarantees that the sub-subcontractor shall (i) indemnify Builder to the same extent as Subcontractor as set forth herein, and (ii) meet all insurance requirements set forth herein. Prior to the sub-subcontractor’s commencement of any work, Subcontractor shall obtain and provide to Builder a signed agreement from the sub-subcontractor indemnifying Builder, and evidence of satisfactory insurance/participation in the OCIP (if applicable). In addition, Subcontractor shall require that each supplier indemnify Builder to the same extent as Subcontractor as set forth herein.

**17. Clean-up.** Subcontractor shall at all times clean up and remove waste and rubbish from the project caused by Subcontractor's performance of work, and if materials are furnished by Builder, Subcontractor shall move all usable materials provided by Builder to a location designated by Builder. All refuse shall be placed in receptacles provided or at locations designated by Builder. If Subcontractor fails to comply with this provision, Subcontractor hereby authorizes Builder to undertake all clean-up activities deemed necessary and appropriate in Builder's sole and absolute discretion, and agrees to pay Builder's costs thereof, which Subcontractor understands shall not be less than one hundred dollars (**\$100.00**) due to Builder's administration and overhead expenses, and authorizes Builder to deduct the cost from any sums owed by Builder to Subcontractor.

**18. Remedies.** Subcontractor expressly agrees that payment otherwise due Subcontractor may be withheld, and all costs incurred by Builder, including any applicable re-inspection fees, shall be charged against all payments otherwise due Subcontractor in payment for its work if:

- (a) The work performed by Subcontractor is found to be Defective Work;
- (b) Subcontractor does not pay its employees, agents, or sub-subcontractor, or fails to pay for any labor, materials or equipment;
- (c) Another subcontractor's work is damaged by an act for which Subcontractor, or its employees, agents, sub-subcontractors or suppliers are responsible;
- (d) Claims or liens are filed against the project due to the fault of Subcontractor;
- (e) Builder reasonably believes that Subcontractor's work is not progressing satisfactorily, or that it is unlikely that Subcontractor will complete the work in accordance with the construction schedule;
- (f) Subcontractor fails to either perform or to pay the costs and expenses of warranty service Subcontractor is obligated to provide under this Agreement;
- (g) Subcontractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Builder has not elected to withhold amounts to reimburse Builder for the cost of insurance premiums associated with Subcontractor's personnel, employees or agents, or to accept a waiver of such insurance;
- (h) There is reasonable evidence that the work of Subcontractor cannot be completed for the unpaid balance of the Contract Payment; or
- (i) Subcontractor fails to comply with any other provision of this Agreement or any Additional Work Amendment.

**18.1 Use of Withheld Funds.** If Builder becomes entitled to retain any sums otherwise due Subcontractor, Builder, at its sole discretion, shall be entitled to cause the work to be performed by others, and may apply any sums otherwise then due Subcontractor (including sums owed on any Additional Work Amendments) against such costs of completion and any related costs and damages, with any excess thereafter to be paid to Subcontractor. If the cost of such completion results in a deficiency, Subcontractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and reasonable attorneys' fees, incurred by Builder and shall reimburse Builder therefor immediately upon request from Builder.

**19. Alternative Dispute Resolution.** Subcontractor agrees to fully participate in good faith in and be bound by whatever alternative dispute resolution provisions and proceedings are elected by, or are determined to bind, Builder. Therefore, to the extent any dispute, claim, or controversy between Builder and Subcontractor arises out of or relates to any Conditions, Covenants and Restrictions recorded against the project, any sales agreement between Builder and purchasers of the units in the project, any unit(s), common area or association property at the project, and/or any combination thereof, those disputes shall be subject to the disputes resolution proceedings contained in the applicable documents. All other disputes shall be subject to the dispute resolution procedures described below.

**19.1 Mediation.** If a dispute arises out of or relating to this Agreement or a breach thereof and if the dispute cannot be settled through negotiation, the parties agree to first try in good faith to settle the dispute by mediation administered by the Judicial Arbitration and Mediation Services ("JAMS") under its Commercial Mediation Rules, before

resorting to arbitration, litigation, or another dispute resolution procedure. If mediation fails, any claim, controversy or dispute of any kind among the parties, now existing or arising in the future, whether relating to the interpretation of any provision of this Agreement, the rights and obligations of the parties under this Agreement, any other agreement relating to, or arising from, the business of Builder or the work, shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. regardless of any other choice of law provision in any underlying contract or this Agreement.

**19.2 Binding Arbitration.** All disputes shall be subject to binding arbitration conducted by JAMS, in accordance with the JAMS rules (“**JAMS Rules**”) then applicable to the claims presented, as supplemented by this Section. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the rules of JAMS Rules.

**19.2.1 Agreement to Arbitrate.** Builder and Subcontractor shall resolve disputes exclusively through binding arbitration in the county in which the project is located. This arbitration provision shall apply to disputes of any kind or nature regardless of the nature of the relief sought.

**19.2.2 Waiver of Trial by Judge or Jury.** By agreeing to resolve all disputes through binding arbitration, Builder and Subcontractor each give up the right to have their respective claims and defenses decided by a judge or a jury. All claims and defenses shall instead be decided by the arbitrator.

**19.2.3 Participation by Other Parties.** Builder and Subcontractor may have all necessary and appropriate parties included as parties to the arbitration. Subcontractor agrees to participate in and be bound by any arbitration proceeding between Builder and any third party relating to the work. Notwithstanding any provision in this section to the contrary, Builder shall be entitled to terminate this Agreement in whole or in part, if any dispute arises between Subcontractor and Builder, whereupon Builder shall also be entitled to exercise any and all remedies, deductions, and offsets authorized pursuant to this Agreement. Notwithstanding any other provision of this paragraph, if a Subcontractor or material supplier of Subcontractor, or any other necessary third party, cannot be forced to mediate or arbitrate, Builder may elect to unilaterally waive mediation and arbitration.

**19.2.4 Rules of Law.** The arbitrator must follow California substantive law, including statutes of limitations, but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

**19.2.5 Attorneys’ Fees and Costs.** Should any legal action, arbitration or mediation be necessary to enforce or interpret any of the provisions of this Agreement, whether instituted by the parties to the Agreement or a third party, including any claims for Defective Work as performed under this Agreement and any Additional Work Amendment, the prevailing party in such action or arbitration shall be entitled to all actual costs, expenses, expert fees and costs, and reasonable attorneys’ fees incurred therein.

**19.2.6 Final and Binding Award.** The decision of the arbitrator shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Project is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

**19.3 Severability.** In addition to and without limiting the effect of any general severability provisions of this Agreement, if the arbitrator or any court determines that any provision of this Section 18 is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Section 18 shall be conducted under the remaining enforceable terms of this Section 18.

**20. Confidentiality.** Subcontractor shall treat all information, in whatever form, obtained by Subcontractor pursuant to this Agreement as confidential and proprietary information of Builder, and shall not disclose or permit the release of the contents thereof.

**21. No Assignment By Subcontractor.** Subcontractor’s rights and obligations to Builder and each Project Owner under this Agreement or any Additional Work Amendment are non-transferable and non-assignable, and Subcontractor shall not assign all or any part of the work without obtaining the prior written consent of Builder, which consent may be withheld in Builder’s sole and absolute discretion. Subject to the restrictions and prohibitions on assignment set forth in this Section, each and all of the covenants and conditions of this Agreement will inure to the benefit of and be

binding upon the successors in interest of Builder and the successors, heirs, representatives and assigns of Subcontractor. As used in this Section, "successors" means successors to the parties' interest in the project, successors to all or substantially all of the parties' assets, and successors by merger, assignment or consolidation.

**21.1 Assignment by Builder.** Subcontractor understands and agrees that if the Project Owner and/or Builder sell, transfer or assign their right, title or interest in the any project, at their option, the rights under this Agreement may also be sold, transferred or assigned to the same party to whom said rights, title and interest have been assigned or transferred to, so long as the Project Owner's/Builder's assignee or successor in interest agrees to remain bound to Subcontractor pursuant to the same terms and conditions as Builder herein. In such an event, Subcontractor is bound to the successor in interest to the project to the same extent as Subcontractor is obligated to Builder and the Project Owner under the terms of this Agreement. Prior written approval by Subcontractor of the assignment is not a pre-requisite or condition of effectiveness of any such assignment by the Project Owner or Builder.

**22. Notices.** Any notice required or permitted under this Agreement shall be in writing and may be given by facsimile, reliable overnight courier, personal delivery or ordinary mail at the address contained in the Agreement. Such address may be changed by written notice given by one party to the other. Notice shall be deemed received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified, return receipt requested, or one (1) business day after it is sent by overnight delivery with Federal Express or another reliable overnight delivery service, or sent by facsimile.

**23. Entire Agreement.** This Agreement, and all exhibits and addenda attached hereto, which are hereby incorporated herein by reference, shall constitute the entire agreement between the parties hereto, and there are no other agreements, oral or written, made by or relied upon by and between the parties hereto. No provision of this Agreement may be amended or added to except by a Change Order in writing signed by the parties hereto, by an Additional Work Amendment, or as provided elsewhere in this Agreement.

**24. Termination for Cause.** If Subcontractor, in the sole judgment of Builder, (a) becomes insolvent, (b) files or has filed against it any petition in bankruptcy or makes a general assignment for the benefit of creditors, (c) fails or refuses to supply sufficient properly skilled supervisors, workers, or materials, tools, equipment, or supplies of the proper quality, or, (d) fails in any respect to prosecute its work in accordance with this Agreement, Builder may terminate this Agreement or any Additional Work Amendment by written notice to Subcontractor, in addition to exercising any and all other remedies available at law or in equity. In such event, Builder may take possession of all materials, equipment, tools and appliances belonging to or under the control of Subcontractor, and may finish the work by whatever method it may deem expedient, including the hiring of other subcontractors or Subcontractor's sub-subcontractors. In this case, Subcontractor shall not be entitled to receive any further payment under this Agreement or any Additional Work Amendment until the work is completed. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Builder in finishing Subcontractor's work, including compensation for additional managerial and administrative expenses and such other costs and damages as Builder may suffer, the unpaid balance less said expenses, compensation, costs and damages incurred by Builder shall be paid to Subcontractor. If such expenses, compensation, costs and damages incurred by Builder exceed the unpaid balance, Subcontractor shall be liable for and shall immediately and unconditionally pay the difference to Builder. Said expenses referred to above shall include those expenses incurred by Builder for furnishing materials, finishing the work, attorneys' fees and costs and any damages sustained by Builder by reason of Subcontractor's default; and Builder shall have a lien upon all materials, tools and appliances taken possession of, as aforesaid, to secure the payment thereof. The materials, supplies, equipment and tools taken by Builder may be used in completing the Work and may be incorporated into the improvements being constructed. With respect to any such items, the net reasonable value of the same shall be credited against the total completion costs, damages and expenses.

**25. Termination for Convenience.** Builder may at any time and for any reason terminate this Agreement or any Additional Work Amendment at Builder's convenience. Cancellation shall be by service of written notice to Subcontractor as provided for herein. Such termination shall be effective in the manner specified and shall be without prejudice to any claims which Builder may have against Subcontractor. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue its work and the placing of orders for materials, facilities and supplies in connection with the performing its work, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Builder, or give Builder the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter take only such action as may be necessary to preserve and protect the work already in progress and to protect material and equipment at the project or in transit thereto. Upon such termination, Subcontractor shall be entitled to payment for the cost of the work actually completed in conformity with this Agreement as of the date of termination, less the amount of any payments made to Subcontractor prior to the date of the termination of the Agreement. Except as specifically provided above, in no event shall

Subcontractor be entitled to a claim for damages, lost profits or otherwise on account of the termination of this Agreement pursuant to this Section.

**26. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, null or void for any reason, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

**27. Authority to Bind.** Each party, and each individual on behalf of each party signing this Agreement represents that it has the full legal power, authority and right to execute, deliver and perform its obligations under this Agreement, and each party's performance hereunder and the transaction contemplated hereby have been duly authorized by all requisite actions on the part of such party and no remaining action is required to make this Agreement binding.

**28. Cumulative Remedies.** All rights, options and remedies of Builder contained in this Agreement are cumulative so that no one of them is exclusive of the other. Builder will have the right to pursue any one or all of its remedies or to seek damages or specific performance in the event of any breach of this Agreement by Subcontractor, or to pursue any other remedy or relief that may be provided by law or equity, whether or not stated in this Agreement.

**29. Governing Law.** This Agreement and the documents in the form attached as exhibits hereto shall be governed by and construed under the internal laws of the State of California without regard to choice of law rules, except to the extent that the Federal Arbitration Act is applicable to this Agreement. For all purposes herein, this Agreement shall be deemed made and entered into in the County in which Subcontractor performs work for Builder under this Agreement or any Additional Work Amendment.

**30. Waiver.** No waiver by Builder of a breach of any of the terms, covenants or conditions of this Agreement by Subcontractor will be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default by Subcontractor under this Agreement will be implied from any omission by Builder to take any action on account of the default if the default persists or is repeated, and no express waiver will affect any default other than as specified in the waiver. The consent or approval by Builder to or of any act by Subcontractor requiring Builder's consent or approval does not waive or render unnecessary Builder's consent or approval to or of any subsequent similar acts by Subcontractor.

**31. Cross-Default.** Subcontractor and Builder acknowledge and agree that Builder's continued confidence in the ability of Subcontractor to properly and expeditiously perform its work is a substantial and material concern to Builder. Consequently, if Builder and Subcontractor enter into or have entered into any other agreements for other projects constructed by Builder, and Subcontractor defaults under this Agreement or under any other Additional Work Amendment, Builder may, at Builder's election, treat that default as a default of all other agreements and/or amendments between Builder and Subcontractor, and may terminate any or all such agreements for cause pursuant to Section 24 of this Agreement. In the event of any such default, Builder may offset from amounts owing to Subcontractor under any other agreement, this Agreement, or any Additional Work Amendment any losses, damages, costs, and expenses incurred by Builder arising from such default.

**32. Limitation of Liability.** In the event of a breach of this Agreement or any Additional Work Amendment by Builder, Subcontractor may recover only for the work actually completed by Subcontractor, less any amounts already paid to Subcontractor and less any claims by Builder against Subcontractor. Subcontractor expressly waives the right to recover any of the following: (i) loss of anticipated profits on the remainder of the applicable Additional Work Amendment(s); and (ii) any other consequential damages or economic loss, including, but not limited to: (a) lost bonding capacity; (b) principal office expenses, including, but not limited to, costs for personnel; and (c) losses of financing, business, and reputation.

**33. Purchase of Materials Under Title Agreement.** No materials, equipment, fixtures or any other part of the improvements shall be purchased or installed under any security agreement or other arrangement wherein the supplier, seller or lessor reserves or proposes to reserve the right to remove or repossess any such items or to consider them personal property after their incorporation in the work of construction unless authorized in writing by Builder.

**34. Effect of Signature.** This document, when signed by Subcontractor, becomes a proposal that is irrevocable for thirty (30) days after delivery to Builder. No contractual obligations are imposed on Builder by this document until Subcontractor has been supplied with a copy fully executed and signed by Builder.

IN WITNESS WHEREOF, the parties hereto make this Master Subcontract Agreement effective as of the date first written above.

**Builder:**

**PACIFIC WEST DEVELOPMENT, LP**  
**A California limited partnership**

CA License Number: 918075

By Its General Partner:  
PACIFIC WEST DEVELOPMENT, LLC  
a California limited liability company

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

By: \_\_\_\_\_  
Daniel R. Dobron, Managing Member

**Subcontractor:**

CA License Number:

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

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

Name: \_\_\_\_\_

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