



EXHIBIT "B" – SCOPE OF WORK

- 1.0 This Subcontractor's scope of work shall include, but is not limited to, providing all labor, materials, supervision, tools, equipment, taxes, insurance and all other items necessary to perform the complete **Building and Site Demolition work and Asbestos Abatement** for the **Building and Site Demolition, 5315 Baum Blvd.** Subcontractor shall adhere to the following Specification Divisions, Sections and related documents:

All documents listed in Exhibit A

- 1.1 The work is to be performed in strict compliance with the Contract Documents as listed in Exhibit A, except as modified in this Subcontract Agreement.
- 1.2 This is a lump sum contract for the completed work. This Subcontractor is solely responsible for determining the required quantities necessary for completion of work. Should this Subcontractor discover during the progress of the work that the actual quantity is substantially different than the amount indicated on the contract documents, shall notify the Project Superintendent and Project Manager verbally and in writing, to review and verify the quantities. Adjustments to the subcontract amount will be made via change orders in accordance with the unit prices listed in Exhibit C.
- 1.3 Additions, deletions and changes in the Scope of Work as required by Continental Building Systems, will be adjusted by change order in accordance with the unit prices listed in Exhibit C and as detailed in this Subcontract Agreement, unless otherwise agreed to by Continental Building Systems.
- 1.4 The following items are items specifically included as part of this agreement, however, this list is not intended to be all inclusive and does not alleviate this Subcontractor from performing all work or related work within his trade or trades and subcontractor contractual responsibility, whether listed or not listed. The work to be performed under this Subcontract Agreement is more specifically defined but not limited to, the following items as discussed in our negotiations.

Subcontractor shall furnish and install all material, labor and equipment necessary to provide:

- 1) All work included in and in accordance with the Division 02221 Building Demolition, 02230 Site Clearing, 02200 Erosion and Sedimentation Control, and 02300 Earthwork and as indicated on or inferred from the project drawings as they pertain to the Building and Site Demolition and Asbestos Abatement work unless specifically excluded herein.
- 2) The following work is included and listed only for clarity to further define specific elements of the demolition work included in this agreement. The following items are items specifically included as part of this agreement, however, this list is not intended to be all inclusive and does not alleviate this Subcontractor from performing all work or related work within his trade or trades and subcontractor contractual responsibility, whether listed or not listed. The work to be performed under this Subcontract Agreement is more specifically defined but not limited to, the following:
 - a. Complete demolition and disposal of existing structure, site clearing, and asbestos abatement at 5315 Baum Boulevard, formerly occupied by Don Allen Chevrolet,
 - b. Street Closing Permit(s) necessary for your scope of work
 - c. Provide and maintain all traffic control measures, safety barriers, sidewalk scaffolding and signage necessary to protect pedestrians and property from injury or damage.
 - d. Erosion and Sediment Controls installed and maintained for the duration of work included in this agreement. Then left in place for construction of hotel and will be removed by site contractor for hotel.
 - e. Install and maintain rock construction entrance for the duration of work by this subcontractor. Leave in place for construction of hotel. Removal by site contractor for hotel construction.

- f. Provide erosion eels, filter socks, and inlet protection and maintain for the duration of work included in this agreement. Leave in place for construction of hotel. Removal by site contractor for hotel construction.
 - g. Coordinate disconnection of gas service with utility company and others as required
 - h. Coordinate disconnection of electrical service and transformer removal
 - i. Building and foundation demolition
 - j. Backfill cavities and compact in accordance with the plans and specifications
 - k. Demolition of guardrail
 - l. Demolition of existing site walls
 - m. Demolition of existing pavement
 - n. Demolition of trench drains
 - o. Demolition of water meter and valves. Coordinate with utility company as necessary.
 - p. Dispose of rubble and spoils
 - q. Sawcutting as required
 - r. Pavement removal
 - s. Removal of sidewalks at streets only necessary to remove foundations from existing building
 - t. Removal of light poles and lighting in parking lot
 - u. Pavement Repairs road only (including road repairs at tap terminations) in accordance with governing entity.
 - v. Tap Terminations (including all PWSA and/or other fees)
 - w. City and other applicable permits to raze building and complete the work included in this agreement, as required.
 - x. Coordination with utility companies for removal of utilities
 - y. Coordinate covering or removal of existing power lines with power company, such that work is performed at all times in compliance with OSHA regulations
 - z. Remove on-site utilities to curb boxes
 - aa. Coordinate work with PWSA and obtain all PWSA permits
 - bb. All road opening permits
 - cc. Open road and cap all connections as required
 - dd. Repair and patch road surfaces per City standards and obtain necessary bonds
 - ee. Provide necessary security
 - ff. Move and put back temporary perimeter fence as necessary for the performance of work; fence is supplied by Contractor.
 - gg. Provide fire watch as necessary
 - hh. Night work is included as necessary and/or required
 - ii. Temporary barricades necessary in the performance of work
 - jj. Complete removal to subgrade of footings, walls, basement slab, utilities, conduits, wires, etc.
 - kk. Pumping of existing water in basement and pumping of water as required for the duration of subcontractor's work. Subcontractor is responsible for all dewatering of all excavations to include ground water and surface water dewatering, to provide a dry and stable area for construction operations
 - ll. Asbestos abatement
 - mm. Crush brick & concrete on site for use as fill (as approved by the engineer) and haul away all excess materials not suitable for backfill
 - nn. Remove all asphalt or recycle for fill (as approved by engineer)
 - oo. All demolished material to be removed from the jobsite to a landfill or dump site suitable to receive material
 - pp. As-Built survey to be provided as stated in the specifications.
 - qq. All shoring as required and necessary and specifically including shoring of Baum Boulevard.
 - rr. Extermination and rodent removal
 - ss. Upon completion of demolition activities this subcontractor shall place site back on grade matching existing contours of site. The owner will supply testing agent to monitor placement of fill for correct compaction where building & utilities are removed. This is how site is to be left.
- 3) The following work is specifically excluded from this agreement:
- a. Removal of existing fence around existing parking lot area
 - b. Seeding and mulching
 - c. Removal of Duquesne Light poles and power lines
 - d. Security guard
- 4) Remove all asbestos containing material (ACM) as defined in the Asbestos Survey prepared by American Geosciences, Inc dated 11-10-10, by a licensed contractor having specific asbestos liability

insurance and in accordance with all applicable codes, laws, and regulations. All personal air monitoring and testing required to perform the asbestos abatement is included. Perform all air testing during the work and final air testing. All medical monitoring/testing of personnel is included, as required. All sampling and testing is to be performed by an independent testing laboratory. All ACM to be transported and disposed of at an approved landfill and documented as required by and in accordance with applicable codes, laws, and regulations. All disposal manifests, sampling and testing documentation, and ACHD Final Clearance Inspection reports are to be furnished upon completion of work..

- 5) It is specifically acknowledged that subcontractor has reviewed the Geotechnical Report as well as the drawings and specifications issued by CEC.
- 6) Obtain and pay for all demolition permits and landfill disposal cost to remove and legally dispose of all structures, including foundations, basement walls, slabs, pavement, concrete curbs and light pole bases as shown on the plans. Excavated concrete is to be disposed off site unless permitted to be buried on site in areas designated in the Contract Documents. Excavate and remove all existing underground storm, sanitary, water and gas lines indicated for removal on the plans. If required, remove all abandoned underground storage tanks as noted in the Contract Documents in accordance with all governing agency requirements
- 7) Subcontractor shall backfill and compact voids where old foundations, debris, and other buried materials have been removed. Work shall be backfilled in controlled compacted layers as defined in the construction documents. Subcontractor shall repair any area that fails where settlements have occurred and bring surface back to the original intent.
- 8) This Subcontractor shall remove all trees, brush and vegetation within the project limits including area of the building, paving areas, and utility or sidewalk lines, and in the areas of cut and fill as designated by the project superintendent. Trees, brush and vegetation shall be cut down and material disposed of as necessary to meet the governing regulations and code requirements. All surface objects, roots and other protruding obstructions shall be cleared and/or grubbed. All wood and large debris shall be removed and disposed of off site.
- 9) All trees that are designated to be saved shall be protected by this subcontractor, with temporary protective fencing or other means suitable to add protection to trees within the drip line of the tree. Any trees to be removed for later replanting, shall be removed and placed at a designated area, covered with ample soil to protect root base.
- 10) Carefully dismantle, remove, and salvage Frame Straightening structure for re-use by others. Place in area clear of potential damage and easily accessible for removal from site by others.
- 11) Provide all dust control and street cleaning/sweeping for the duration of the work performed under this agreement as required.
- 12) Subcontractor has reviewed all drawings and specifications, including the Geotechnical Report, as issued by CEC.
- 13) This subcontractor has visited the site and is aware of all existing conditions that may impact the cost and performance of the work required and assumes all risks associated with the existing site conditions and access to the site.
- 14) Subcontractor is responsible for providing all electric (including generator) and water for its own use in performing the work included in this agreement.
- 15) This Subcontractor includes all necessary mobilization and demobilizations to complete all work included herein. This Subcontractor understands the schedule requirements and includes all shift work, premium time, and expediting costs necessary to perform work included in this Agreement such that the project schedule is not delayed
- 16) This Subcontractor will ensure that all adjacent property, objects, articles, etc. are protected during the performance of its work under this agreement. This Subcontractor will be responsible for any and all repairs or replacement of damaged items resulting from the work performed by this Subcontractor or its Subcontractors.
- 17) This agreement includes supplying and installing and removing of all barricades and safety devices necessary in the performance of this work.
- 18) Contractor is responsible to install all systems per codes, standards, manufacturer recommendations, and all other federal, state and local laws as required for the equipment supplied.

- 19) The Subcontractor is responsible for all cost associated with B&O taxes, sales and use taxes and all costs for permits, fees and/or licenses required to legally perform this work.
 - 20) Subcontractor is responsible for compliance with the General Notes included in the contract documents.
 - 21) On-site parking shall be limited to one work vehicle per subcontractor. Offsite parking accommodations for tradesmen is the subcontractor's responsibility as necessary.
 - 22) It is understood that this Subcontractor has a complete understanding of the work required by this Subcontract and that any problem areas, uncertainties, dimensions, etc. have been verified. This Subcontractor warrants that a complete scope of work will be provided, consistent with the intent of the Contract Documents, unless specifically excluded herein.
 - 23) The lump sum amount of this Subcontract Agreement indicated above shall be firm for the duration of the Project and is not subject to any escalation for material or labor.
 - 24) All work to be coordinated with Continental Building System's jobsite superintendent.
 - 25) The Subcontractor will participate in weekly Project coordination meetings to monitor the progress of work and schedule upcoming activities.
 - 26) Subcontractor is responsible to provide and maintain current as-built and survey information.
 - 27) Subcontractor shall provide wash down area and shall remove all mud from vehicles and equipment exiting the site.
- 1.5 Subcontractor shall immediately remove all debris generated from their work so as not to hinder the work of other subcontractors. Cleanup of debris generated to a Continental provided dumpster, as well as maintenance of an organized project site is a requirement of this contract. If this subcontractor for whatever reasons generates an excessive amount of debris, you will be required to remove it to an approved dumping facility at your expense. It is further agreed that all debris from this subcontractor's work shall be removed from the jobsite on a daily basis and all surplus material removed from the jobsite before processing of the final draw.
- 1.6 CBS has adopted the use of an electronic submittal process in conjunction with the use of a web-based document management tool called PDM. It is our intention to submit all product data, shop drawings, cut sheets and calculations on this project electronically to the extent that it is practical. PDM is a Project Document Management tool that we have incorporated that is designed specifically for construction businesses and professionals, that provides efficient management of the entire workflow process – from design through bidding, project management, project closeout and operations. PDM is a web-based, paperless system that all of our project team members including subcontractors and suppliers will participate in, providing them access to specific project information relative to their scopes of work such as contract documents, meeting minutes, submittals, RFI's, and schedules that they need during the course of a project.

CBS requires that all submittals be sent electronically including product data, cut sheets, calculations, schedules and shop drawings, with the only exception being material samples. Subcontractor shall provide one (1) submittal set in separate appropriately named .pdf electronic files for approval. These submittals shall be uploaded to CBS through the project portal of PDM. In instances where material samples are required, they will be submitted separately to the project manager in the appropriate CBS office. Even if the architect or an engineer requires hard copies of a particular submittal, the subcontractors and suppliers are still required to send the submittal to CBS in electronic form and we will produce the required number of hard copy submittals to send to the architect, unless we instruct you differently. CBS will scan any reviewed / approved hard copy submittals sent back from the architect and return them to the subcontractor / supplier in electronic form through PDM. If you do not possess the ability to convert your submittal documents into an electronic format, you can go to any local reprographics shop and they can scan the documents for you and convert them into the appropriate electronic form.

The Subcontractor will receive a notification thru PDM from CBS of the requirement to submit documents. This notification will include a link that will direct you to the project and to the submittal within the project. When clicking this link you will first be directed to log in the PDM Web Interface. After logging in, you will be taken to a page whereby you can upload your electronic submittals. If you are submitting for the first time for this item, leave the "Submit file as" Submitted. If you are resubmitting this submittal change the "Submit file as" to Re-submitted. You can then use the fields below to browse to the files on your computer. This will allow up to 5 individual files to be uploaded. If you have more than 5, try merging multiple pdf's into a single file. When you are complete with placing the files necessary for this submittal into the form and are ready to submit, click on the "Upload Selected Files" button in the upper right hand corner of the screen. Upon

clicking this, you will be redirected to the submittal item within the project whereby you can see the documents you have uploaded under the document tab of the submittal item. **A review of the submittal by Continental Building Systems does not indicate acceptance of the submittal. Until you have received a returned document thru the system indicating a Design Professionals form of acceptable review, DO NOT PROCEED.**

- 1.7 Upon completion of the work, Subcontractor shall submit to CBS in separate appropriately named .pdf electronic files the following closeout documents through the project portal of PDM: A completed set of "As-Built" drawings with all markings legible and comprehensible; operation and maintenance manuals with full parts list and suggested spare parts list; a transmittal sheet for attic stock / spare parts turned over to the owner or CBS with signed acknowledgement of receipt; a ONE - year warranty letter for completed work; whatever manufacturers written warranties are required by the project contract documents; and documentation outlining all required commissioning and owner training in accordance with the contract documents.
- 1.8 This Subcontractor shall deliver to Continental Building Systems Field Office a copy of their Hazardous Communication, MSDS Book and Company Safety Policy immediately after award and shall maintain it there until the completion of subcontractors work. This subcontractor will also file a CBS daily report with our Superintendent.
- 1.9 It is mandatory that this Subcontractor's Foreman or Company Representative attend Weekly Job Meetings and Safety/Hazcom training talks conducted on site.
- 1.10 It is also mandatory that this subcontractor's Foreman or Company Representative conduct this same Safety/Hazcom Training Talk with Subcontractor's work force on site at that time. These training sheets are to be signed after completion of meeting by all employees attending meeting. These signed safety talks are to be returned that same day to Continental Building Systems Field Office, to be filed in Continental Building Systems Job Specific Safety Manual.
- 1.11 This subcontractor acknowledges that they have reviewed and will abide by Continental Building Systems Safety Program, including the six (6) foot fall rule. In compliance with this rule, all subcontractor's personnel shall be tied off at all times while exposed to a fall of six feet or greater.
- 1.12 SCHEDULE/MILESTONE DATES
Demolition Schedule Baum Blvd dated 02-18-13.
- 1.13 Subcontractor is required to purchase/have available from previous CBS projects at least one (1) Nextel Cellular phone to be used for direct communication (Pittsburgh Business Net Access) between this Subcontractor's Superintendent and Continental Building Systems' on-site personnel as directed in the contract documents for this project.

- **Payment requests must be received no later than the 25th day of the month.**
- **If the 25th is a weekend or holiday, requests must be received the last working day PRIOR to the 25th.**
- **Requests must have an original signature and be notarized.**
- **The Subcontractor shall submit separately for final payment of retainage.**



EXHIBIT "E"

SAFETY EXHIBIT

Continental Building Systems ("CBS") has prepared a CBS Safety Program that is catalogued and maintained in the main offices of CBS. The Safety Program is available for review by all subcontractors or others working on CBS's projects at the field office of CBS. The CBS Safety Program is not intended to relieve subcontractors or others from their legal obligations regarding safety on project sites or to create any third party liability for CBS beyond that required by law.

1.0 In addition to OSHA, the following CBS safety rules are highlighted for emphasis and Subcontractor shall be obligated to abide by these however these are not intended to limit the obligations of the Subcontractor:

- A. 100% hard hats.
- B. 100% eye protection.
- C. 100% fall protection for all personnel working at six-feet or higher, including work from scaffolds and steel erection. Safety monitors for workers on a roof are prohibited.
- D. Whenever feasible, no work on live electric panels; NFPA 70-E rules apply.
- E. Extension cords must be at least 12-guage and damage-free.
- F. No radios, walkmans or headphones. Use of personal cell phones, including Bluetooth, is prohibited except during break or lunch.
- G. No smoking in trailers or building structures.
- H. No weapons.
- I. When non-English speaking subcontractors are on site, the Subcontractor must provide a fluently bi-lingual person who can direct work, interpret safety rules and communicate freely with the non-English speaking worker(s).
- J. No plastic fuel cans.
- K. Dustless cutting or wet-cutting (if 40 degrees or warmer) of silica containing materials is required.

The Subcontractor will abide by any other safety requirements necessary and/or related to its scope of Work as defined in the Contract Documents including this Agreement.

- 1.1 Any labor, materials, and/or equipment required to comply with the safety requirements (as it applies to the work under this Subcontract) shall be the responsibility of the Subcontractor.
- 1.2 This subcontractor shall complete the computerized pre-qualification process in PDM (Project Document Management) annually. As part of the pre-qualification process, this subcontractor shall provide all required attachments which can

include Subcontractor's safety program, workers' compensation insurance certificate, letter of verification of the company's Experience Modification Rating (EMR or X-Mod) from its workers' compensation carrier and its OSHA 300A Summary Logs. This must be completed prior to formal award of this subcontract as it is required as a condition of the subcontract.

- 1.3 This Subcontractor shall deliver to CBS' Field Office a copy of the Subcontractor's Material Safety Data Sheets (MSDS) Book prior to starting work and shall maintain them there until the completion of Subcontractor's work. The MSDSs shall be legible and provided to CBS in an organized fashion with an index. This Subcontractor also will file a CBS daily report with the CBS Superintendent.
- 1.4 This Subcontractor is responsible for informing all employees working with, or around, hazardous or toxic materials or substances, precisely what these materials are, how to handle them properly, and what action is to be taken in the event of an accident or misuse of the material or substance. This Subcontractor shall fully familiarize itself with all Federal and State requirements pertaining to making such information available to employees.
- 1.5 This Subcontractor will designate one competent person to supervise all work in progress to its completion. Subcontractor shall notify CBS in writing as to who this person is. This person will attend an on-site safety orientation before beginning work and attend scheduled safety meetings held on the site before and during the performance of the Subcontract as called for by CBS' Project Manager or Project Superintendent. This person also will conduct the CBS Subcontractor Employee Orientation Tool Box Talk with all of Subcontractor's employees on site. This includes initial Subcontractor crew members and additional Subcontractor employees if/when they arrive on site.
- 1.6 It is mandatory that this Subcontractor's Foreman or Company Representative participate in weekly Safety Tool Box Talks conducted on site by the CBS superintendent.
- 1.7 It is mandatory that this Subcontractor's Foreman or Company Representative conduct a Safety Tool Box Talk with Subcontractor's workforce on site and return the signed Tool Box Talk to the CBS superintendent within one week. It is permissible for a Subcontractor to conduct its own Tool Box Talk if the Tool Box Talk is conducted weekly with a signed copy provided to the CBS Field Office weekly.
- 1.8 It is mandatory that all employees and subcontractors of this Subcontractor participate in monthly emergency evacuation drills held on site, as called for by CBS' Project Manager or Project Superintendent.
- 1.9 Subcontractor shall immediately remove all debris generated from his work so as not to hinder the work of other subcontractors. Cleanup of debris generated, as well as maintenance of an organized project site is a requirement of this

Agreement. If an excessive amount of debris is generated by this Subcontractor for whatever reasons, Subcontractor will be required to remove it to an approved dumping facility at its expense. It is further agreed that all debris from this Subcontractor's work shall be removed from the jobsite on a daily basis and all surplus material removed from the jobsite before processing of the final draw.

- 2.0 Subcontractor must obtain permission from CBS Project Manager to use lower-tier subcontractors or independent contractors on site. Subcontractor shall enforce all project safety rules with subcontractors and independent contractors.
- 2.1 Subcontractor will notify CBS Superintendent of all near-miss incidents, accidents and hazardous conditions immediately.
- 2.2 All contractors including this Subcontractor shall wear high visibility vests or clothing when working within 15 feet of the road and when working around heavy construction equipment such as during the sitework phase.
- 2.3 Gasoline-powered equipment is prohibited in areas with exposure to the public and in enclosed areas where ventilation is limited. Scrubbers are required on propane- and diesel-powered equipment. Subcontractor creating carbon monoxide (CO) is responsible for testing the levels of CO for both peak exposures and 8-hour Time Weighted Averages.



Columbus Office:
150 East Broad Street
Columbus, Ohio 43215
(614) 221-1818
(614) 221-6374 Fax

Pittsburgh Office:
395 E. Waterfront Dr., Ste 300
Homestead, PA 15120
(412) 464-8933
(412) 464-2994 Fax

Cleveland Office:
23240 Chagrin Blvd, Ste 400
Beachwood, Ohio 44122
(216) 454-0111
(216) 454-0116 Fax

SHORT FORM SUBCONTRACT AGREEMENT

PROJECT NO.

SUBCONTRACT NO.

ACCOUNTING NO.

This Subcontract Agreement (this "Agreement") is made and is effective this [Day] day of [Month], 2013 between **Continental Building Systems** (the "Contractor") and [SC NAME] (the "Subcontractor") to perform the work identified in Article 2 in accordance with the Contract Documents for the Project:

PROJECT: **Project Name**
 Address
 Address

OWNER: **Owner Name**
 Address
 Address

ARCHITECT/ENGINEER: **Architect Name**
 Address
 Address

CONTRACTOR: **Continental Building Systems**
 Address
 Address

SUBCONTRACTOR: **[SC NAME]**

Whereas the Subcontractor, having carefully examined the plans and specifications prepared for the Project by the Architect, and having visited and examined the Project site, and assuming all risks therefrom, desires to subcontract a portion of the Project. In consideration of the Subcontract Amount below, the Contractor and the Subcontractor agrees as follows:

\$0.00 ([Amount as Text])

ARTICLE 1 - Contract Documents

1.1 The Contract Documents, consist of the general conditions of this Agreement between the Contractor and the Owner, the plans as listed in 1.2 and specifications prepared for the Project, including all modifications incorporated prior to the date of this Agreement, and other details necessary to complete the drawings under this Agreement.

1.2 List of Drawings:
 1)

CBS Internal Review

ARTICLE 2 - Scope of Work

- 2.1** The Subcontractor agrees to execute and complete the Subcontractor's Work in strict compliance with the Contract Documents and all applicable laws, regulations and ordinances bearing on the Project. The Subcontractor is bound to the Contractor by the terms of the Contract documents and assumes toward the Contractor, with respect to the Subcontractor's Work, all of the obligations and responsibilities that the Contractor, in the Contract Documents, has assumed towards the Owner. The Subcontractor subcontracts from the Contractor a portion of the Project Work, hereinafter designated as the Subcontractor's Work. The Subcontractor's Work shall include all work necessary or incidental to complete the [TradeDescription] work for the Project as more particularly, though not exclusively, specified in section 2.2.
- 2.2** Scope of the Subcontractor's Work briefly described:
- 2.3** **CONFLICTS.** In the event of a conflict between this Agreement and the Contract Documents, this Agreement shall govern. This Agreement, the provisions of the General Contract and other Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provisions of this Agreement irreconcilably conflicts with a provision of the General Contract and the other Contract Documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern.

ARTICLE 3 - Performance Warranty

- 3.1** The Subcontractor shall furnish all work and supplies necessary to complete the Subcontractors Work to the complete and full satisfaction of the Contractor and the Owner. The Contractor shall have no obligation to protect or defend the Subcontractor's Work. The Subcontractor guarantees that all equipment and/or material furnished to the Contractor hereunder shall be free from any and all liens and defects of material, manufacturing and that all of the Subcontractor's Work shall be of the highest quality and properly performed in a good and workmanlike manner. The Subcontractor warrants to the Contractor and Owner the fitness for a particular purpose and merchantability of all Subcontractor's Work. If no warranty is required of the Contractor in the Contract Documents, then the Subcontractor shall warrant its work as described above for the period prescribed by law but in no case for less than the period of one year from the date(s) of substantial completion of all or a designated portion of the Subcontractor's Work or acceptance or use by the Contractor or Owner of designated equipment, whichever is sooner. For a period of one (1) year from the date of completion and acceptance of all of the Subcontractor's Work by the Owner or as may be more specifically required by the Contract Documents. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.
- 3.2** **DUTY TO BE BOUND.** Both the Contractor and the Subcontractor shall be bound by the Schedule of Work. The Subcontractor shall provide the Contractor with any requested scheduling information for the Subcontractor's Work. The Schedule of Work and all subsequent changes thereto shall be submitted to the Subcontractor in advance of the required performance.
- 3.3** **SCHEDULE CHANGES.** The Subcontractor acknowledges and agrees that as the Project progresses, the Contractor may change and/or modify the Project Schedule due to factors inherent in the Work to be performed for the Project As a result, Subcontractor's Work may be re-sequenced and/or rescheduled by the Contractor in order to coordinate the work of the Subcontractor with that of other subcontractors or the Owner's other contractors, if any, and to accommodate the needs and requirements of the Owner or the Project. The Subcontractor recognizes that changes and/or modifications may be made in the Schedule of Work by the Contractor and agrees to comply with such changes.
- 3.4** **NOTICE TO CURE.** If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work, or it fails to make prompt payment for its workers, lower-tier subcontractors or suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within forty-eight (48) hours after written notification to commence and continue satisfactory correction of such default with diligence and promptness, then the Contractor without prejudice to any rights or remedies it may have, shall have the right to any or all of the following remedies:
- a.** supply such number of workers and quantity of materials, equipment and other facilities as the Contractor deems necessary for the completion of the Subcontractor's Work; or any part thereof which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the prompt payment of same including reasonable overhead, profit and attorneys' fees;
 - b.** contract with one or more additional contractors, to perform such part of the Subcontractor's Work as the Contractor shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to the Subcontractor;
 - c.** withhold payment of any moneys that may otherwise be or become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the complete satisfaction of the Contractor and Owner or Owner's designated representative; and
 - d.** in the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice.

ARTICLE 4 - Time of Performance

- 4.1** **TIME IS RECOGNIZED TO BE OF THE ESSENCE OF THIS AGREEMENT.** The Subcontractor acknowledges that performance of the Work and Substantial Completion of the Project within the Subcontract Time is an essential condition of this Agreement. Following commencement, the Subcontractor shall carry the Work forward with competent, adequate, properly skilled forces to maintain progress in accordance with the Project Schedule. The Work shall not be suspended or shut down, but shall progress continuously and expeditiously, unless otherwise approved by the Contractor. Contractor shall have the right, but not the obligation, to coordinate the Subcontractor's schedule with the schedules of the Contractor and the other Subcontractors. Subcontractor agrees to abide by and perform its obligations in accordance with the Project Schedule. The Contractor shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work. The Subcontractor shall commence its work when so directed by the Contractor and if such work is interrupted for any reason the Subcontractor shall resume such work within two working days from the Contractor's notice to do so. The Subcontractor agrees to diligently and continuously prosecute its Work and to coordinate its Work with other work being performed on the Project, so that the Contractor shall not incur any time impact to its planned performance by any act or omission of the Subcontractor in the completion of the Project. When it becomes apparent from the weekly progress meeting that any activity completion date may not be met as a result of delays or disruption caused directly or indirectly by this Subcontractor, then this Subcontractor shall take some or all of the following actions at no additional cost to the Owner, the Architect/Engineer, or the Contractor.
- a.** Increase construction manpower in such quantities as will eliminate the backlog of subcontractor's work and put the Project back on schedule.
 - b.** Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment, or any combination of the foregoing as will substantially eliminate the backlog of subcontractor's work and put the Project back on schedule.
 - c.** Reschedule activities to achieve maximum practical concurrence of accomplishment of activities and put the Project back on schedule.

- 4.2 If a Subcontractor fails to take any of the above actions within 48 hours after receiving written notice, the Owner and the Contractor may take action to attempt to put the Project back on schedule. All costs of such actions, including professional fees, attorney's fees, and reasonable overhead and profit shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount.
- 4.3 Should the Subcontractor reasonably believe that it is entitled to an extension of time for completion of any portion or portions of the Work, the Subcontractor shall, within forty-eight (48) hours after the occurrence of the cause of the delay, notify the Contractor, in writing, of such belief.

ARTICLE 5 – Payment Conditions

- 5.1 Payment to the Subcontractor is expressly subject to the condition precedent of, and no obligation to render payment arises until and unless, full and unconditional receipt by the Contractor of payment from the Owner for work properly performed by Subcontractor is received, the Contractor shall not have any obligation to make payment to the Subcontractor. The Subcontractor expressly acknowledges that progress and final payments to him are dependent, as an express and absolute condition precedent, upon the Contractor's receipt of payment from the Owner and the Subcontractor fully accepts this risk of non-payment. The Subcontractor understands that payment on the Project comes from the Owner and not the Contractor. The Subcontractor expressly assumes the complete risk of the insolvency of the Owner. The subcontractor shall submit payment applications on AIA Forms G702 and G703 to the Contractor's principal office or as otherwise directed by the Contractor. The Payment Application shall also provide all necessary supporting information as required by the Contractor and the Owner, and all payments are subject further to receipt of lien waivers, affidavits, warranties and guarantees as required by the Contract Documents or the Contractor. Progress Payment Applications shall be submitted to the Contractor no later than the 25th day of each payment period for work performed up to and including the last day of the payment period. The Contractor reserves the right to retain 10% of the amounts due to the Subcontractor until final acceptance of the Project. Payment to the Subcontractor does not constitute or imply acceptance of any part of the Subcontractor's Work. The Subcontractor's final Payment Application shall be submitted to the Contractor no later than the 25th day of the payment period and only after acceptance of the Subcontractor's Work by the Owner, the Contractor, and if necessary, the Architect/Engineer. Prior to processing the Subcontractor's final payment, the Subcontractor shall submit to the Contractor all required manuals, As-built drawings, guarantees, warranties for materials and equipment furnished by the Subcontractor, completion of "Punch List" of items; and an affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the Subcontractor's Work, have been paid. Progress payments and final payments to the Subcontractor shall be made for amounts due pursuant to this Agreement no later than the seven (7) business days after receipt by the Contractor of payment from the Owner for the Subcontractor's Work assuming all previously mentioned conditions precedent have been satisfactorily met. Where applicable under the law where the Project is located the Contractor intends to file documentation permitting the Waiver of Lien Rights by Subcontractor. Subcontractor hereby agrees to such waiver when permitted and required by the contractor. When applicable, a copy of the Waiver of Liens is attached hereto as Exhibit F.
- 5.2 All payments to Subcontractor shall at all times be subject to Contractor's right of offset, recoupment, contribution and/or indemnity with respect to any claims of the Contractor against the Subcontractor and/or amounts due to the Contractor from the Subcontractor arising out of this Agreement and/or any other agreements between the parties, including, but not limited to, agreements between the parties on other construction projects.

ARTICLE 6 - Safety

- 6.1 The Subcontractor shall be solely responsible for, and solely liable for any failure to ensure, the safe, proper and lawful conduct of the Subcontractor's performance on and in connection with this Project. The Subcontractor is responsible for compliance with all governing safety rules and regulations of the State and Federal Government and any municipalities. Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of the responsibility therefore. Subcontractor shall notify Contractor immediately following any accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor. The Subcontractor shall indemnify the Contractor for fines, penalties, corrective measures, and expenses incurred by the Contractor that result from the acts of commission or omission by the Subcontractor, his agents, employees and assigns in failure to comply with such safety rules and regulations. The Contractor shall have the right to withhold from payment due the Subcontractor fines, which are assessed, and expense it incurs as a result of the Subcontractor's violation of any safety rule or regulation for the Project.

ARTICLE 7 - Changes

- 7.1 The Contractor, without nullifying this Agreement, may direct the Subcontractor in writing to make changes to the Subcontract's Work. All such changes must be authorized in writing by the Contractor. Subject to satisfactory performance and compliance with all the other requirements of the Contract Documents, Subcontract adjustments and the Contractor obligations resulting from changes ordered by the Owner shall be made by the Contractor to the Subcontractor only to the extent, and are subject to the condition precedent that the Contractor receives first an appropriate adjustment for the same from the Owner. No course of conduct between Contractor and Subcontractor shall be considered a waiver of the requirements for written change orders or timely notice as prescribed in this Agreement. Should the Owner, Architect/Engineer or Contractor dispute the validity or amount of any Change Order request, the Subcontractor, upon written notice from the Contractor, shall proceed with the Work pending resolution of the dispute. The Subcontractor shall diligently execute the Work to a timely completion.

ARTICLE 8 - Disputes

- 8.1 All claims, disputes and other matters in question between the Contractor and the Subcontractor arising out of or relating to the performance of this Agreement, or the breach thereof, shall be decided by litigation in the Court of appropriate jurisdiction where the office of the Contractor is located as shown on this Agreement, and by execution of this Agreement, the Subcontractor hereby accepts the jurisdiction of said Court. In resolution of all claims, disputes and other matters in question between the Contractor and the Subcontractor, the laws of that jurisdiction shall apply. Every such suit shall be commenced not later than one year from the date when the cause of action accrued or three (3) months after the Subcontractor last performs work on the Project, whichever shall occur first.

ARTICLE 9 - Insurance

- 9.1 Prior to start of Subcontractor's Work, Subcontractor and its subcontractors shall at their own expense procure and maintain insurance in compliance with the minimum insurance terms and general conditions as set forth below. Additionally, subcontractors and its subcontractors shall comply with any insurance obligations as set forth in the contracts between Owner and Contractor, its subsidiaries and affiliates, and/or by the State in which the Subcontractor's Work is being performed.

A. General Liability:

Per Occurrence	\$1,000,000
General Aggregate	\$1,000,000
Products and Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Medical Payments	\$5,000

Additional requirements:

- "Continental Building Systems, its subsidiaries and affiliates: along with any and all other parties required by the contract are to be Additional Insureds on subcontractor's policy per Insurance Services Office (ISO) forms:
 - CG 20 10 11 85 **or an equivalent form**
 - Or
 - CG 20 10 10 01 (premises operations) and CG 20 37 10 01 (completed operations) **or equivalent forms.**

Copy of the Insurance Carrier Endorsement(s) evidencing this requirement either on a blanket basis (where required by written agreement), or naming "Continental Building Systems, its subsidiaries and affiliates" along with any other Additional Insureds (where required) must be included.

- Waiver of Subrogation in favor of all Additional Insureds is required. Copy of the Insurance Carrier Endorsement evidencing this requirement must be included.
- Subcontractor's insurance is primary and non-contributory as respects all insurance maintained by Contractor and any other Additional Insureds. Copy of the Insurance Carrier endorsement evidencing this requirement must be included.
- Products and Completed Operations Insurance to be maintained after Subcontractor's work is completed.
- Contractual Liability Insurance insuring the obligations assumed by Subcontractor in this Agreement must be provided.

B. Automobile Liability:

Per Accident \$1,000,000 combined single limit

Additional requirements:

- Subcontractor's liability insurance to apply to all owned, non-owned, hired and borrowed vehicles.
- "Continental Building Systems, Its subsidiaries and affiliates" along with any and all other parties required by contract are to be Additional Insureds. Copy of the Insurance Carrier Endorsement evidencing this requirement must be included.
- Waiver of Subrogation in favor of all Additional Insureds is required. Copy of the Insurance Carrier Endorsement evidencing this requirement must be included.

C. Workers' Compensation:

State	Statutory
Employers Liability (including Ohio Stop Gap)	\$1,000,000 Each Accident
Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 Each Employee

Additional requirements:

- Where permitted by law, Waiver of Subrogation in favor of all Additional Insureds. Copy of the Insurance Carrier Endorsement evidencing this requirement must be included.

D. Umbrella/Excess

Per Occurrence	\$1,000,000
General Aggregate	\$1,000,000
Products and Completed Operations Aggregate	\$1,000,000

Additional requirements:

- Subcontractor's insurance is primary and non-contributory as respects all insurance maintained by Contractor and any other Additional Insured.

E. Cancellation:

Subcontractor and its insurers shall provide at least 30 days written notice of cancellation, non-renewal or material alteration of the required insurance. Copy of the Insurance Carrier Endorsement evidencing this requirement must be included.

F. Financial Ratings of Insurance Carrier(s):

The Insurance Carrier(s) must have a financial rating of at least A- VII as defined by AM Best Company.

G. Certificates of Insurance

Subcontractor shall provide a Certificate of Insurance that complies with the insurance requirements noted above. Copies of Insurance Carrier(s) Endorsements for Additional Insured, Waiver of Subrogation and Cancellation must be attached to the Certificate.

ARTICLE 10 - Taxes

- 10.1** The Subcontractor shall pay all applicable taxes, including but not limited to Sales Taxes, Social Security Insurance payments and Unemployment Compensation Taxes upon the material and labor furnished under this Agreement, as required by the United States Government and the State in which the Subcontractor's Work is being performed.

ARTICLE 11 – Compliance With Laws

- 11.1** The Subcontractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as "laws") applicable to the Subcontractor including, but not limited to, all employment laws, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety, and all other laws with which the Contractor must comply according to the Contract Documents. By execution of this Subcontract Agreement the Subcontractor certifies that it is its intent to only use workers in the performance of its obligations hereunder that are legally authorized to work in the United States.

- 11.2** By execution of this Subcontract Agreement, Subcontractor guarantees that the individuals employed by Subcontractor in any capacity, including but not limited to, employees, subcontractors and independent contractors, are authorized to work in the United States. Subcontractor represents that it has completed the I-9 verification process for all individuals Subcontractor has performing services for Contractor. Contractor maintains the right to audit the Form I-9s for all individuals Subcontractor has performing services for Contractor every six (6) months. Contractor will provide Subcontractor with five (5) days advanced written notice of its intent to perform a Form I-9 audit. In response to Contractor's audit request, Subcontractor shall provide copies of all Form I-9s and any supporting documentation for all individuals who Subcontractor had performing services for Contractor at any time subsequent to the date upon which Contractor gave notice of the preceding Form I-9 audit. The Subcontractor agrees to indemnify Contractor in accordance with Article 13 of this Subcontract Agreement for any issue arising out of Subcontractor's hiring or retention of any individual who is not authorized to work in the United States.

ARTICLE 12 - Termination

- 12.1** Should the Subcontractor fail to satisfy all of the contractual deficiencies of which it is advised by the Contractor within twenty-four (24) hours from receipt of the Contractor's written notice, then Contractor, without prejudice to any other right or remedies, shall have the right to take whatever steps it deems necessary or desirable to remedy said deficiencies and charge the cost thereof to the Subcontractor, who shall be liable to the Contractor for all costs, direct or indirect, which the Contractor incurs as a result of the Subcontractor's failure to perform this Agreement, or any part thereof, in accordance with its terms. The liability of the Subcontractor and its bonding company (if any) to the Contractor shall include but not be limited to: (1) all actual costs associated with the performance of the Subcontractor's Work; (2) all costs associated with a delay in the schedule of the performance of the Contractor's Work including delay and acceleration costs; (3) attorneys fees and related costs. In addition, the Subcontractor's liability for costs incurred by the Contractor under this Agreement shall include (a) ten (10) percent markup. This markup is not a penalty, but is established as stipulated damages to compensate the Contractor for its administrative fees and/or to allow the Contractor a reasonable profit on work which the Contractor must perform, or costs which the Contractor must incur as a result of the Subcontractor's failure to properly perform or correct deficiencies in its performance.
- 12.2** In addition to any other rights Contractor may have at law or under this Agreement with respect to cancellation or termination, Contractor may terminate this Agreement for its convenience as to all or any part of the Work for which Subcontractor's performance is not yet completed by giving notice of termination to Subcontractor. In the event Subcontractor is not in default under this Agreement at the time such notice is given, Contractor will make an equitable termination payment to Subcontractor based on the proportion of the Work properly completed, the costs expended or unavoidably incurred in connection with the terminated Work, excluding any profit on work which has not been performed through the date notice of termination is issued. Such payment shall not exceed that fraction of the total Price which is allocable to the Work performed. Subcontractor shall submit his claim for a termination payment within thirty (30) days after receiving notice of termination, and shall take prompt action to minimize costs which form part of the claim.

ARTICLE 13 - Indemnification

- 13.1** To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless the Owner, the Architect/Engineer, the Architect's consultants, and the Contractor from all claims, damages, losses, penalties or expenses caused in whole or in part by the Subcontractor or any entity or person under the control (a "Claim"), including, but not limited to, attorney's fees, from any Claims or damages for bodily injury, sickness, disease, or death; hiring or retaining of employees, subcontractors and/or independent contractors who are not authorized to work in the United States; failure to comply with Form I-9 verification; Subcontractor's acts or omissions beyond the scope of its authority under this Agreement, including, without limitation, any injury (whether to body, property of personal or business character or reputation) sustained by any person or organization or to any person or to property; any breach of any representation or warranty made by the Subcontractor in this Agreement; any breach of any representation or warranty made by the Subcontractor in this Agreement; and from claims for damage to tangible property, other than the Subcontractor's Work itself. This indemnification shall extend to claims resulting from performance of this Agreement and shall apply only to the extent that the claim or loss is caused in whole or in part by any negligent act or omission of the subcontractor or any of its agents, employees, or subcontractors. This indemnity shall be effective regardless of whether the claim or loss is caused in some part by a party to be indemnified. The obligation of the Subcontractor under this Article shall not extend to claims or losses that are primarily caused by the Architect/Engineer, or the Architect's consultant's performance or failure to perform professional responsibilities.
- 13.2** If a Claim is asserted against Contractor by a third party, and such Claim is covered by the indemnification provisions of this Paragraph or of any other provision of this Subcontract Agreement and Contractor elects to invoke such indemnification provisions, then Contractor shall give to the Subcontractor reasonably prompt notice in writing of such Claim. Upon written notice to Contractor that the Subcontractor intends to defend against such Claim, then the Subcontractor shall have the right to control the defense of such Claim as well as any settlement or compromise thereof, provided that the Subcontractor will diligently pursue with competent counsel the defense thereof, will keep Contractor informed as to the progress of the defense and will not settle such Claim if the settlement results in any liability or imposes any affirmative obligations on Contractor. Notwithstanding anything herein to the contrary, Contractor shall have the right to participate in the defense of such claim at its own expense. This Paragraph shall survive the termination of this Agreement.

ARTICLE 14 - Special Provisions

- 14.1** **WORKPLACE WEAPONS POLICY.** The Contractor has a company policy that prohibits carrying a firearm or weapon of any kind on its premises and its project sites. Except as prohibited by law, and in compliance with the Contractor's policy carrying of a firearm or other weapons while performing work for the Contractor is prohibited. The Contractor reserves the right to conduct searches for weapons on its property and its project sites. Violators will be removed from the project site or premises of the Contractor and the subcontract may be terminated for cause. Subcontractor is expected to advise all its employees and sub-subcontractors and vendors of Contractor's policy regarding workplace weapons. Vehicles parked on the premises of the Contractor or those under the control of the Contractor may be searched. Possession of a valid concealed weapon permit authorized by the State where the project is located is not an exemption under this policy.
- 14.2** **PROTECTION OF THE WORK.** Protect from damage, injury, theft and other loss, by any cause whatsoever, all of its Work, whether complete or not, and all of its materials, supplies, tools, and equipment at or near the Project Site. For this purpose, the Subcontractor shall provide storage or other protection of the its Work and it's materials, supplies, tools and equipment against damage, injury, theft and other loss, by any cause whatsoever. The Subcontractor shall comply with all reasonable requests of the Contractor to specially protect such property. If, in the reasonable judgment of the Contractor, the Work, or such property, is not adequately protected by the Subcontractor, the Contractor shall have the right, but not the duty, to direct the Subcontractor to protect the Work and the property, and the Subcontractor shall comply with such directions at the Subcontractor's cost. Should the Subcontractor fail to comply with the Contractor's direction or otherwise fail to adequately protect the Work and the property, then the Contractor shall have the right, but not the duty, to take reasonable steps to protect the Work and the property, and may deduct the cost thereof from any payment due the Subcontractor. The Subcontractor agrees, without loss or damage to the Contractor, to make good any loss, injury, theft or damage to any and all such Work, materials, supplies, tools and equipment, including, but not limited to, the payment or reimbursement of any deductible amount or self-insured retention on any Builder's Risk or other property insurance policy providing coverage for the loss, until final acceptance of the Subcontractor's Work by the Owner.

ARTICLE 15- Miscellaneous

- 15.1** This Agreement shall be governed by the laws of the State where the office of the Contractor is located as shown on this Agreement, and enforced in a court of appropriate jurisdiction in such location, but regardless of the location of the office of the Contractor, the execution and delivery of this Agreement shall be undertaken under and governed by the provisions of the Ohio Electronic Transactions Act, Ohio Code §§ 1306.01 – 1306.15 (as amended, the "Electronic Transactions Act").
- 15.2** If any provision of this Agreement is held to be unenforceable, no other provision shall be affected thereby, and the remainder of this Agreement shall be enforceable.
- 15.3** This Agreement shall be binding on the partners, successors, assigns and legal representatives of the parties to the Agreement.
- 15.4** Neither party may assign this Agreement without the written consent of the other party, and at the sole discretion of that party.
- 15.5** The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

- 15.6 Unless modified in writing pursuant to the terms and conditions herein, this Agreement constitutes the entire agreement between the parties hereto. No oral representations or other agreements have been made by Contractor except as stated in this Agreement upon which the Subcontractor has relied in entering this Agreement. This Agreement may not be changed in any way except as herein provided, and no term or provision hereof may be waived by Contractor except in writing signed by its duly authorized officer or agent. The marginal descriptions of any term or provision of this Agreement are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof.
- 15.7 As to any notice, consent, agreement or change order referenced or provided for under this Agreement, the parties intend and hereby agree that the relevant document may be issued and accepted (and may thus become binding) through either a signed paper document or through transmission of the relevant document with electronic signature undertaken through agreed-upon methods in accordance with the Electronic Transactions Act.

IN WITNESS WHEREOF, intending to be legally bound hereby, the Parties have executed this Agreement under seal, the day and year first written above

CONTRACTOR

SUBCONTRACTOR:

Continental Building Systems

[SC NAME]

THIS AGREEMENT IS BEING EXECUTED AND DELIVERED BY CONTINENTAL BUILDING SYSTEMS AND SUBCONTRACTOR THROUGH ELECTRONIC SIGNATURES UNDERTAKEN PURSUANT TO A METHOD SPECIFIED BY CONTINENTAL BUILDING SYSTEMS UNDER AND IN ACCORDANCE WITH THE PROVISIONS OF THE ABOVE-REFERENCED ELECTRONIC TRANSACTIONS ACT. THE ELECTRONIC SUBMISSION AND ACCEPTANCE OF THIS AGREEMENT (IN ACCORDANCE WITH THE PROCESS DESIGNATED BY CONTINENTAL BUILDING SYSTEMS) IS ACKNOWLEDGED AND AGREED BY CONTINENTAL BUILDING SYSTEMS AND SUBCONTRACTOR AS STANDING IN LIEU OF PAPER SIGNATURES AND SHALL BE FULLY BINDING UPON AND ENFORCEABLE AGAINST THE PARTIES, NOTWITHSTANDING THE LACK OF PAPER SIGNATURES. CONTINENTAL BUILDING SYSTEMS NEVERTHELESS RESERVES THE RIGHT TO REQUIRE THAT THE PARTIES EXECUTE AND DELIVER PAPER SIGNATURES IF IT DEEMS NECESSARY OR CONVENIENT FOR RECORD-KEEPING PURPOSES.

EV – 03/13



Columbus Office:
150 East Broad Street
Columbus, Ohio 43215
(614) 221-1818
(614) 221-6374 Fax

Pittsburgh Office:
395 E. Waterfront Dr, Ste 300
Homestead, PA 15120
(412) 464-8933
(412) 464-2994 Fax

Cleveland Office:
23230 Chagrin Blvd, Ste 430
Beachwood, Ohio 44122
(216) 454-0111
(216) 454-0116 Fax

SUBCONTRACT AGREEMENT

PROJECT NO. **DoubleClickAndType**

SUBCONTRACT NO.

ACCOUNTING NO.

ARTICLE 1 AGREEMENT

This Agreement is made this **[Day]** of **[Month]**, 2013, by and between **Continental Building Systems** hereinafter called the **Contractor** and **SC Name** hereinafter called the **Subcontractor**, to perform part of the Work on the following Project:

PROJECT: **Project Name**
 Address
 Address

OWNER: **Owner Name**
 Address
 Address

ARCHITECT/ENGINEER: **Architect Name**
 Address
 Address

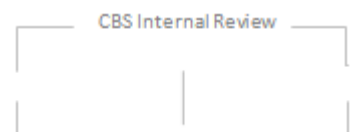
CONTRACTOR: **Continental Building Systems**
 Address
 Address

SUBCONTRACTOR: **SC Name**

CONTRACT AMOUNT: **\$0.00 ([AMOUNT AS TEXT])**

Notice to the parties shall be given at the above addresses.

THE CONTRACTOR AND SUBCONTRACTOR AGREE AS SET FORTH BELOW:



ARTICLE 2
SCOPE OF WORK

- 2.1 SUBCONTRACTOR'S WORK.** The Subcontractor agrees to execute and complete the Subcontractor's Work in strict compliance with the Contract Documents and all applicable laws, regulations and ordinances bearing on the Project. The Subcontractor is bound to the Contractor by the terms of the Contract documents and assumes toward the Contractor, with respect to the Subcontractor's Work, all of the obligations and responsibilities that the Contractor, in the Contract Documents, has assumed towards the Owner. The Subcontractor subcontracts from the Contractor a portion of the Project Work, hereinafter designated as the Subcontractor's Work. The Subcontractor's Work shall include all work necessary or incidental to complete the [TradeDescription] work for the Project as more particularly, though not exclusively, specified in section 2.3.
- 2.1.1** The limits of the Work shall not be restricted because of the arrangement of the Specifications. Where responsibility for particular Work is required of a particular trade or contract, that trade or contract shall not be released from that responsibility by reason of the location of the specification wording or drawing information which establishes the responsibility. Thus, the Subcontractor shall be responsible for all Work required of it, even though that responsibility is shown only in that portion of the documents typically pertaining to another contractor or trade.
- 2.1.2** The terms "furnish and install", "provide" or equivalent words are used in the Contract Documents without further limitation, shall be construed to mean the responsibility to furnish and completely install the device, equipment, or material named, together with all associated devices, equipment, materials, wiring, piping, etc., as may be required for a complete and operating installation.
- 2.1.3** This Subcontractor shall comply, to the fullest extent, with all Federal, State, Local laws as they apply to the requirements for this Project. Any labor, materials and/or equipment required to comply with these standards (as it applies to the work of this Subcontractor) shall be the responsibility of the Subcontractor.
- 2.2 CONTRACT DOCUMENTS.** The Contract Documents which are binding on the Subcontractor include this Agreement, all the General and Special Conditions, Drawings and Specifications and other Documents forming, or by reference made, a part of the Contract between the Owner and Contractor, and as are set forth in Exhibit A hereto. All of the above documents are part of this Subcontract Agreement and shall be available for inspection by the Subcontractor upon its written request at all reasonable times at the principal office of the Contractor. Nothing in the Contract Documents shall be construed to create a contractual relationship between persons or entities other than the Contractor and Subcontractor.
- 2.3 SCOPE OF WORK.** Subcontractor shall provide all labor, materials, tools, equipment, machinery, permits, supervision, insurances, taxes, plant, transportation, scaffolding, and all other items necessary or incidental to complete the [TradeDescription] Work for the Project in strict accordance with and reasonably inferable from the Contract Documents and as more particularly, though not exclusively, specified in Exhibit B hereto.
- 2.4 CONFLICTS.** In the event of a conflict between this Agreement and the Contract Documents, this Agreement shall govern. This Agreement, the provisions of the General Contract and other Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provisions of this Agreement irreconcilably conflicts with a provision of the General Contract and the other Contract Documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern.

ARTICLE 3
SCHEDULE OF WORK

- 3.1 TIME IS OF ESSENCE.** Time is of the essence for both parties, and they mutually agree to see to the performance of their respective work and the work of their subcontractors so that the entire Project may be completed in accordance with the Contract Documents and the Schedule of Work. The Contractor shall prepare the Schedule of Work ("Project Schedule") and revise, as it determines necessary, such schedule as the Work progresses.
- 3.2 DUTY TO BE BOUND.** Both the Contractor and the Subcontractor shall be bound by the Schedule of Work. The Subcontractor shall provide the Contractor with any requested scheduling information for the Subcontractor's Work. The Schedule of Work and all subsequent changes thereto shall be submitted to the Subcontractor in advance of the required performance.
- 3.3 SCHEDULE CHANGES.** The Subcontractor acknowledges and agrees that as the Project progresses, the Contractor may change and/or modify the Project Schedule due to factors inherent in the Work to be performed for the Project. As a result, Subcontractor's Work may be re-sequenced and/or rescheduled by the Contractor in order to coordinate the work of the Subcontractor with that of other subcontractors or the Owner's other contractors, if any, and to accommodate the needs and requirements of the Owner or the Project. The Subcontractor recognizes that changes and/or modifications may be made in the Schedule of Work by the Contractor and agrees to comply with such changes.
- 3.4 PRIORITY OF WORK.** Subcontractor shall prepare and submit a detailed schedule identifying in ample detail, as required by Contractor, the activities which comprise Subcontractor's schedule of Work required under this Agreement. Subcontractor shall identify all manpower requirements required to support the activity durations of Subcontractor's Work and other information as requested by Contractor. The Contractor shall have the right, but not the obligation, to coordinate the Subcontractor's schedule with the schedules of the Contractor and the other Subcontractors. Subcontractor agrees to abide by and perform its obligations in accordance with the Project Schedule. **The Contractor shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work.** The Subcontractor shall commence its work when so directed by the Contractor and if such work is interrupted for any reason the Subcontractor shall resume such work within two working days from the Contractor's notice to do so. The Subcontractor agrees to diligently and continuously prosecute its Work and to coordinate its Work with other work being performed on the Project, so that the Contractor shall not incur any time impact to its planned performance by any act or omission of the Subcontractor in the completion of the Project.
- 3.5 TIMELY PERFORMANCE.** The Subcontractor acknowledges that performance of the Work and Substantial Completion of the Project within the Subcontract Time is an essential condition of this Agreement. Following commencement, the Subcontractor shall carry the Work forward with competent, adequate, properly skilled forces to maintain progress in accordance with the Project Schedule. The Work shall not be suspended or shut down, but shall progress continuously and expeditiously, unless otherwise approved by the Contractor. When it becomes apparent from the weekly progress meeting that any activity completion date may not be met as a result of delays or disruption caused directly or indirectly by this Subcontractor, then this Subcontractor shall take some or all of the following actions at no additional cost to the Owner, the Architect/Engineer, or the Contractor.
- a. Increase construction manpower in such quantities as will eliminate the backlog of subcontractor's work and put the Project back on schedule.
 - b. Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment, or any combination of the foregoing as will substantially eliminate the backlog of subcontractor's work and put the Project back on schedule.
 - c. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities and put the Project back on schedule.
- 3.5.1** If a Subcontractor fails to take any of the above actions within 48 hours after receiving written notice, the Owner and the Contractor may take action to attempt to put the Project back on schedule. All costs of such actions, including but not limited to professional fees, attorneys' fees, and reasonable overhead and profit shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount.
- 3.6 SCHEDULE IMPACT.** If the Subcontractor is responsible for any impact in the timely performance or sequence of the schedule, the Subcontractor shall pay the Contractor for all costs and damages suffered by the Contractor as a result of such time impacts.

ARTICLE 4
CONTRACT AMOUNT

- 4.1** The Contractor agrees to pay to the Subcontractor for the satisfactory performance of the Subcontractor's Work the amount stated in Article 1 subject to additions or deductions per Article 6, and other provisions of this Agreement.

ARTICLE 5
PAYMENT

5.1 GENERAL PROVISIONS

- 5.1.1 SCHEDULE OF VALUES.** The Subcontractor shall provide a Schedule of Values satisfactory to the Contractor and the Owner no more than fifteen (15) days from the date of execution of this Agreement or Notice to Proceed from the Contractor which ever is earlier. Where required by the Contractor the Schedule of Values shall be coordinated with the Schedule for performance of the Work so that payment to the Subcontractor is consistent with progress of completion of the Work.
- 5.1.2 PAYMENT USE RESTRICTION.** Payment received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials for use in performing the Subcontractor's work on this Project before it is used in any other manner.
- 5.1.3 PAYMENT USE VERIFICATION.** The Contractor shall have the right at all times to contact the Subcontractor's subcontractors and suppliers to ensure that the same are being paid promptly by the Subcontractor for labor or materials furnished for use in performing the Subcontractor's Work.
- 5.1.4 PARTIAL LIEN WAIVERS AND AFFIDAVITS.** As a prerequisite for payment, the Subcontractor shall provide, in a form satisfactory to the Owner and the Contractor, partial lien or claim waivers and affidavits from the Subcontractor, and its subcontractors and suppliers for the completed Subcontractor's Work. Such waivers may be made conditional upon payment. Where applicable under the law where the Project is located the Contractor intends to file documentation permitting the Waiver of Lien Rights by Subcontractor. Subcontractor hereby agrees to such waiver when permitted and required by the Contractor. When applicable, a copy of the Waiver of Liens is attached hereto as Exhibit F.
- 5.1.5 SUBCONTRACTOR PAYMENT FAILURE.** Upon payment by the Contractor, Subcontractor shall promptly pay its lower-tier subcontractors and material suppliers the amounts to which they are entitled. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontractor's Work are not being paid, the Contractor may but is not required to give written notice of such claim or lien to the Subcontractor and may but is not required to take any steps deemed necessary to assure progress payments are utilized to pay such obligation including but not limited to the issuance of joint checks. If upon receipt of said notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Contractor or (b) post a bond indemnifying the Owner, the Contractor, and the Contractor's surety, if any, and the premises from such claim or lien; then the Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorney fees arising out of or relating to any such claim or lien until the claim or lien has been satisfied by the Subcontractor.
- 5.1.6 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS.** The Subcontractor shall not assign any money due or to become due under this Contract, or under any Change Order thereto, without the written consent of Contractor. Should Subcontractor assign all or any part of any moneys due or to become due under this Contract the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work under this Subcontract and any Change Orders.
- 5.1.7 PAYMENT NOT ACCEPTANCE.** Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontractor's Work.
- 5.1.8 INSURANCE.** No payment hereunder shall become due until the Subcontractor has furnished evidence of insurance coverage, as outlined in Article 14 of this Subcontract Agreement.
- 5.2 PROGRESS PAYMENTS**
- 5.2.1 APPLICATION.** Subcontractor's application for payment shall be itemized and supported by substantiating data as required in the Contract Documents for the Contractor's payment application. The Subcontractor shall submit with all payment requests the AIA forms G702 and G703. No payment request will be processed unless it is submitted with these forms. Subcontract payment applications may include payment requests on account of properly authorized Construction Change Directives. The Subcontractor's progress payment application for work performed in the preceding payment period shall be submitted to the Contractor per the terms of this Agreement and specifically Subparagraphs 5.1.1, 5.2.2, 5.2.3 and 5.2.4 for approval of the Contractor. The Contractor shall forward, without delay, the approved value to the Owner for payment.
- 5.2.2 RETAINAGE/SECURITY.** The rate of retainage shall be equal to the percentage retained from the Contractor's payment by the Owner for the Subcontractor's work, however such retainage shall not be less than 10% unless agreed to by the Contractor. Such right to retain funds and the rate thereof shall not be construed to limit the Contractor's right of offset or other rights to protect the Contractor's interest as provided for in the Contract Documents
- 5.2.3 TIME OF APPLICATION.** The Subcontractor shall submit progress payment applications to the Contractor no later than the 25th day of each payment period for work performed up to and including the last day of the payment period indicating work completed and, to the extent allowed under Subparagraph 5.2.4, materials suitably stored during the preceding payment periods.
- 5.2.4 STORED MATERIALS.** Unless otherwise provided in the Contract Documents, and if approved in advance by the Contractor and Owner, applications for payment may include materials and equipment not incorporated in the Subcontractor's Work but delivered to and suitably stored at the Project site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the Project site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures and/or documentation satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment or to otherwise protect the Owner's and Contractor's interest therein, including transportation to the Project site.
- 5.2.5 PAYMENT CONDITIONS.** Progress payments to the Subcontractor for satisfactory performance of the Subcontractor's Work shall be made no later than seven (7) business days after receipt by the Contractor of payment from the Owner for the Subcontractor's Work. It is specifically understood and agreed that the Contractor's obligation to make payment to the Subcontractor is dependent, as an express and absolute condition precedent, upon the Contractor's receipt of payment from the Owner and will be adjusted for any charge-backs (offsets) owed to the Contractor. The Subcontractor understands that payment on the Project comes from the Owner and not the Contractor. The Subcontractor expressly assumes the complete risk of the insolvency of the Owner.

5.3 FINAL PAYMENT

- 5.3.1 APPLICATION.** Upon acceptance of the Subcontractor's Work by the Owner, the Contractor, and if necessary, the Architect/Engineer; and upon the Subcontractor furnishing evidence of fulfillment of the Subcontractor's obligations in accordance with the Contract Documents and Subparagraph 5.3.2, the Contractor shall forward the Subcontractor's application for final payment. The Subcontractor shall submit for final payment on AIA forms G702 and G703 including applications for retainage.

- 5.3.2 REQUIREMENTS.** Before the Contractor shall be required to forward the Subcontractor's application for final payment to the Owner, the Subcontractor shall submit to the Contractor:
- approval and acceptance of the Subcontractor's Work by the Owner, Architect/Engineer, and Contractor, as well as the satisfaction of required closeout procedures, including receipt by the Contractor of all manuals, "as-built" drawings, guarantees, and warranties for materials and equipment furnished by the Subcontractor, or any other documents required by the Contract Documents, and completion of "punch list" items;
 - an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontractor's Work for which the Owner or its property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;
 - consent of surety to final payment, if required;
 - certification that insurance required by the Contract Documents to remain in effect beyond final payment pursuant to Paragraph 14.4 is in effect and will not be canceled or allowed to expire without at least thirty (30) days' written notice to the Contractor unless a longer period is stipulated in the Contract; and
 - other data if required by the Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner. Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontractor's Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under Paragraph 9.10, or for faulty or defective work appearing after final payment.
- 5.3.3 PAYMENT CONDITIONS.** Final payment of the balance due of the Contract Amount shall be made to the Subcontractor:
- upon receipt of the Owner's waiver of all claims related to the Subcontractor's Work except for unsettled liens, unknown defective work, and non-compliance with the Contract Documents or warranties; and
 - within seven (7) business days after receipt by the Contractor of final payment from the Owner for such Subcontractor's Work. It is specifically understood and agreed that the Contractor's obligation to make final payment to the Subcontractor is dependent, as an express and absolute condition precedent, upon the Contractor's receipt of payment from the Owner and any rights of offset retained by Contractor. The Subcontractor understands that payment on the Project comes from the Owner and not the Contractor. The Subcontractor expressly assumes the complete risk of the insolvency of the Owner.
- 5.4 LATE PAYMENT INTEREST.** To the extent obtained by the Contractor, under the Contract Documents, progress payments or final payment due and unpaid under this Agreement shall bear interest from the date payment is due at the rate provided in the Contract Documents, or, in the absence thereof, at the prime rate as published by the Wall Street Journal at the time the payment is due.
- 5.5 WITHHOLDING PAYMENT.** Any Progress Payment or the Final Payment may be withheld by the Contractor because of defective or rejected work not remedied, claims filed by third parties, reasonable evidence indicating the probability of the filing of claims against the Subcontractor, failure of the Subcontractor to make payments properly to its subcontractors, material suppliers, or laborers, or for applicable taxes, fees, and fringe benefits, reasonable doubt that the Work of the Subcontractor can be completed for the balance of the Subcontract Amount, for any back charge by the Contractor, or for any breach of this Subcontract Agreement. All payments to Subcontractor shall at all times be subject to Contractor's right of offset, recoupment, contribution and/or indemnity with respect to any claims of the Contractor against the Subcontractor and/or amounts due to the Contractor from the Subcontractor arising out of this Agreement and/or any other agreements between the parties, including, but not limited to, agreements between the parties on other construction projects.

ARTICLE 6 CHANGES, CLAIMS AND DELAYS

- 6.1 CHANGES.** When the Contractor orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Work which are within the general scope of this Agreement. Adjustments in the Contract Amount or contract time, if any, resulting from such changes shall be set forth in a Subcontract Change Order or a Subcontract Construction Change Directive pursuant to the Contract Documents. **NO SUCH ADJUSTMENTS SHALL BE MADE FOR ANY CHANGES PERFORMED BY THE SUBCONTRACTOR THAT HAVE NOT BEEN ORDERED IN WRITING BY THE CONTRACTOR. NO WRITTEN AUTHORIZATION MEANS NO PAYMENT.** No course of conduct between Contractor and Subcontractor shall be considered a waiver of the requirements for written change orders or timely notice as prescribed in this Agreement.
- 6.1.1** A Subcontract Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement upon the change in the scope of the Work, adjustment in the Contract Amount or Schedule of Work.
- 6.1.2** A Subcontract Construction Change Directive is a written instrument prepared by the Contractor directing a change in the Work and stating a proposed adjustment, if any, in the Contract Amount or Schedule of Work or both. A Subcontract Construction Change Directive shall be used in the absence of agreement on the terms of a Subcontract Change Order.
- 6.1.3** Any extra work performed by the Subcontractor without the written order of the Contractor shall be at the Subcontractor's expense.
- 6.1.4** It is the intent of the parties to this Agreement to settle all changes in full and final at the time of issuance of the Change Order. The Subcontractor, by agreeing to a price for the change, will waive all future claims or right to assert claims related to issues associated with or arising from the specific change order.
- 6.1.5** If the Subcontractor alleges a time extension is due for a specific change order, he will submit a network analysis showing the impact of the change on critical activity items only.
- 6.1.6** For changes authorized to proceed, the following previously agreed to wage scales by craft, equipment rates, and/or unit prices, shall apply for this project and shall include all provisions for taxes, insurance, overhead and profit. These shall be the sole basis for determining the cost of the changes to the Work. These costs shall be detailed as an attachment to this Agreement in Exhibit C.
- 6.2 CLAIMS RELATING TO OWNER.** The Subcontractor agrees to make all claims for which the Owner is or may be liable in the manner and within the time limits provided in the Contract Documents for like claims by the Contractor upon the Owner and in sufficient time for the Contractor to make such claims against the Owner in accordance with the Contract Documents but in no circumstance more than five (5) calendar days after the beginning of the occurrence of the event for which claim is made.
- 6.3 CLAIMS RELATING TO CONTRACTOR.** The Subcontractor shall give the Contractor written notice of all claims not included in Paragraph 6.2 within five (5) calendar days of the beginning of the occurrence of the event for which claim is made; otherwise, such untimely claims shall be deemed irrevocably waived. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Paragraph 6.2 shall be resolved in the manner provided in Article 15.
- 6.4 ADJUSTMENT IN CONTRACT AMOUNT.** If a Subcontract Change Order or Construction Change Directive requires an adjustment in the Contract Amount, the adjustment shall be established as follows, unless otherwise agreed to by the Contractor:
- 6.4.1** The maximum allowance for overhead and profit combined, included in the total cost to the Contractor shall be based on the following schedule:
- 6.4.1.1** For the Subcontractor, for any Work performed by the Subcontractor's own forces, hourly rates as designated by the Subcontractor and shown as Exhibit C hereto.
- 6.4.1.2** For the Subcontractor, for any Work performed by the Subcontractor's own forces, 10 percent of the cost for material, unless noted otherwise in the contract documents. Should a specific percentage be noted therein, the Subcontractor shall comply with that indication.

- 6.4.1.3** For the Subcontractor, for Work performed by the Subcontractor's Sub-subcontractor, 5 percent of the amount due the Sub-subcontractor. Sub-Subcontractors are entitled to 10% for direct labor costs and 5% for direct material purchased by the Subcontractor. Unless noted otherwise in the Contract Documents, should a specific percentage be noted therein the Subcontractor shall comply with that indication.
- 6.4.1.4** If a situation occurs requiring extra work, the Project Superintendent must be informed that an extra cost is involved. He may or may not authorize the work. If work is authorized, a daily Extra Work Order indicating the labor hours by craft, and materials used is to be signed by the Project Superintendent, with a copy of the Extra Work Order provided to him. This will be the basis for a Change Order to be written when the work is complete. The cost of ALL extra work, whether anticipated or not, shall be based on the following:
- Labor: Cost of all labor as stipulated in Exhibit C shall include all Profit, Overhead, Benefits, Taxes and Insurances.
- Materials: Net cost of construction materials and supplies delivered to the site including applicable sales and/or Use Tax, transportation costs, trade and cash discounts. (Note: Sales tax is applicable to transportation costs). Other Costs: Costs of a special nature, approved in advance by the Contractor, such as for rigging, labor transportation, equipment rentals, royalties, permits and other expenses of the general nature.
- 6.4.2** The 10 percent allowance* referred to in Paragraph 6.4.1.2 and the 5 percent allowance* referred to in Paragraph 6.4.1.3 shall include the following overhead items and shall include all profit: (*see notes below)
- Supervision and execution expenses.
 - Small tools, scaffolding, blocking, shores, appliances, etc. and the expense of maintaining same.
 - Administrative expenses clerical, etc., both at the Project site and in the Subcontractor's office.
 - Taxes required to be paid by the Subcontractor
- *Unless noted otherwise in the Contract Document. Should a specific percentage be noted therein the Subcontractor shall comply with that indication.
- 6.4.3** **PREMIUM TIME.** No overhead and profit will be permitted on premium time. The Subcontractor's standard wage scale shall be used throughout the construction period.
- 6.4.4** **PERFORMANCE REQUIRED.** Should the Owner, Architect/Engineer or Contractor dispute the validity or amount of any Change Order request, the Subcontractor, upon written notice from the Contractor, shall proceed with the Work pending resolution of the dispute. The Subcontractor shall diligently execute the Work to a timely completion.
- 6.4.5** **TIME IMPACT OF CHANGES.** The Subcontractor is responsible for evaluating the effect changes ordered in the Work have on the Schedule. The cost of all impacts to the scheduled performance of the Subcontractor's Work and any required time extension shall be included in the Subcontractor's submitted Change Order request. Failure to include such costs and time extension shall constitute an irrevocable Waiver by the Subcontractor of any claim for time extension, extra costs due to time impacts or the mitigation of Liquidated Damages.
- 6.5** **SUBSTANTIATION OF ADJUSTMENT.** If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the Contractor on the basis of reasonable expenditures and savings of those performing the Work attributable to change, including, in the case of an increase in the Contract Amount, an allowance for combined overhead and profit as described herein.
- 6.5.1** **SUBMISSION OF CHANGE ORDER COSTS.** The Subcontractor shall prepare a detailed cost estimate for each Change Order or request for changes in this Agreement and submit it to the Contractor with the Change Order Request Form provided to the Subcontractor by the Contractor as Exhibit "D" hereto. Any impacts to the Schedule of the Subcontractor's Work shall be shown in detail and in the form of the Schedule for the Project.
- 6.5.2** **ACCOUNTING RECORDS.** The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order or Subcontract Construction Change Directive:
- a. labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;
 - b. costs of materials, supplies and equipment, whether incorporated in the Work or consumed, including transportation costs;
 - c. costs of renting, either from the Contractor or from others, of machinery and equipment other than hand tools;
 - d. costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
 - e. costs of additional supervision and field office personnel services necessitated by the change.
- 6.6** **TIME RELATED ADJUSTMENTS.** Should the Subcontractor reasonably believe that it is entitled to an extension of time for completion of any portion or portions of the Work, the Subcontractor shall, within forty-eight (48) hours after the occurrence of the cause of the delay, notify the Contractor, in writing, of such belief, setting forth (a) the cause for the delay, (b) a description of the portion or portions of Work affected thereby, (c) an estimate of the probable effect of such delay on the progress and completion of the Work, and (d) all details pertinent thereto. A subsequent written application for the specific number of days of extension of time requested shall be made by the Subcontractor to the Contractor within five (5) calendar days after the effects of the delay can be ascertained or the conclusion of the event causing the impact whichever is the earlier. Any change in the Subcontract Time resulting from such claim(s) shall be authorized by a Change Order. It is a condition precedent to the consideration or prosecution of any claim for an extension of time that the foregoing provisions regarding the timing of notice shall be strictly adhered to in each and every instance and, if the Subcontractor fails to comply, the claim shall be deemed to have been waived. If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for the Subcontractor's Work shall be extended by Subcontract Change Order or Subcontract Construction Change Directive to the extent obtained by the Contractor under the Contract Documents, and the Schedule of Work shall be revised accordingly. All time extensions and recovery of associated cost by the Subcontractor are conditioned on the receipt of same by the Contractor from the Owner.
- 6.6.1** It is recognized and agreed by the Subcontractor that no claim for an increase in the Subcontract Time for either acceleration, delay disruption, interference or hindrance will be allowed based on changes in the Project Schedule which are of the type ordinarily experienced in projects of similar size and complexity. The Contractor shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of time impacts caused by any person not a party to this Agreement unless the Contractor has first recovered the same on behalf of the Subcontractor from said person.
- 6.7** **LIQUIDATED DAMAGES.** If the Contract Documents provide for liquidated or other damages for delay beyond the completion date set forth in the Contract Documents, and such damages are assessed, then the Contractor may assess same against the Subcontractor in proportion to the Subcontractor's share of the responsibility for such delay. However the amount of such assessment shall not exceed the amount assessed against the Contractor.
- 6.7.1** Nothing set forth herein shall limit the Subcontractor's liability to the Contractor for the Contractor's actual delay damages caused by the Subcontractor's delay. The Subcontractor shall be liable to the Contractor for the Contractor's actual damages caused by the Subcontractor's delay.
- 6.8** **NO WAIVER OF NOTICE.** The requirement for written Notice of changes and claims shall not be considered waived by the conduct of the Contractor as it relates to other changes and claims on the Project.

ARTICLE 7 CONTRACTOR'S OBLIGATIONS

- 7.1** **CONTRACT DOCUMENTS.** Prior to executing this Subcontract, the Contractor shall make available to the Subcontractor the Contract Documents which are binding on the Subcontractor and set forth in Paragraph 17.4.

- 7.2 AUTHORIZED REPRESENTATIVE.** The Contractor shall designate one or more persons who shall be the Contractor's authorized representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.
- 7.3 TIMELY COMMUNICATIONS.** The Contractor shall transmit, with reasonable promptness, all submittals, transmittals, and written approvals relating to the Subcontractor's Work.

ARTICLE 8 SUBCONTRACTOR'S OBLIGATIONS

- 8.1 OBLIGATIONS DERIVATIVE.** The Subcontractor binds itself to the Contractor under this Agreement in the same manner and extent as the Contractor is bound to the Owner under the Contract Documents and will so bind its lower-tier subcontractors. The Subcontractor shall make available to its lower-tier subcontractors the Contract Documents which are binding on the lower-tier subcontractors.
- 8.2 RESPONSIBILITIES.** The Subcontractor shall furnish at its own expense all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontractor's Work in strict accordance with and reasonably inferable from the Contract Documents.
- 8.3 PROTECTION OF THE WORK.** The Subcontractor shall take necessary precautions to properly protect the Subcontractor's Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy at its cost and expense such damage to the satisfaction of the Contractor, or the Contractor may so remedy and deduct the cost thereof from any amounts that may be otherwise due or to become due the Subcontractor.
- 8.3.1** The Subcontractor, at its own expense agrees to:
- a. Take all necessary precautions to protect the work of other trades from any damage caused by the Subcontractor's operations;
 - b. (1) Protect from damage, injury, theft and other loss, by any cause whatsoever, all of its Work, whether complete or not, and all of its materials, supplies, tools, and equipment at or near the Project Site. (2) For this purpose, the Subcontractor shall provide storage or other protection of the Work and its materials, supplies, tools and equipment against damage, injury, theft and other loss, by any cause whatsoever. (3) The Subcontractor shall comply with all reasonable requests of the Contractor to specially protect such property. (4) If, in the reasonable judgment of the Contractor, the Work or such property is not adequately protected by the Subcontractor, the Contractor shall have the right, but not the duty, to direct the Subcontractor to protect the Work and the property, and the Subcontractor shall comply with such directions at the Subcontractor's cost. Should the Subcontractor fail to comply with the Contractor's direction or otherwise fail to adequately protect the Work and the property, then the Contractor shall have the right, but not the duty, to take reasonable steps to protect the Work and the property, and may deduct the cost thereof from any payment due the Subcontractor. (5) The Subcontractor agrees, without loss or damage to the Contractor, to make good any loss, injury, theft or damage to any and all such Work, materials, supplies, tools and equipment, including, but not limited to, the payment or reimbursement of any deductible amount or self-insured retention on any Builder's Risk or other property insurance policy providing coverage for the loss, until final acceptance of the Subcontractor's Work by the Owner.
- 8.3.2** Within ten (10) calendar days after the execution of the Subcontract Agreement, the Subcontractor shall provide a list of proposed subcontractors and suppliers, be responsible for taking field dimensions, providing tests, ordering of materials and all other actions as required to meet the Schedule of Work.
- 8.4 SHOP DRAWINGS.** The Subcontractor shall be responsible to the Contractor for the accuracy and conformity with the Contract Documents and other submittals that pertain to its work in the same manner as the Contractor is responsible therefore to the Owner. Shop drawings, or their approval by the Contractor or the Architect/Engineer, shall not be deemed to authorize deviations or substitutions from the requirements of the Contract Documents.
- 8.4.1** Within ten (10) calendar days after the execution of this Agreement the Subcontractor shall submit to the Contractor a list of all submittals and shop drawings which are required by the Technical Specifications and such list shall contain the anticipated date that the Subcontractor will supply this information to the Contractor and also noting the date by which the Subcontractor must have the Architect/Engineer's review in order to accommodate the Project Schedule.
- 8.5 TEMPORARY SERVICES.** The Subcontractor shall at its sole cost and expense furnish all temporary services and/or facilities necessary to perform the Subcontract Work, except as provided in Article 17. Said article also identifies those common temporary services, if any, which are to be furnished by the Subcontractor.
- 8.6 COORDINATION.** The Subcontractor shall:
- a. cooperate with the Contractor and all others whose work may interfere with the Subcontractor's Work;
 - b. specifically note and immediately advise the Contractor of any such interference with the Subcontractor's Work; and
 - c. participate in the preparation of coordination drawings and work schedules in areas of congestion.
- 8.7 AUTHORIZED REPRESENTATIVE.** The Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) to whom the Contractor shall issue instructions, orders or directions, except in an emergency.
- 8.8 PROVISION FOR INSPECTION.** The Subcontractor shall notify the Contractor when portions of the Subcontractor's Work are ready for inspection. The Subcontractor shall at all times furnish the Contractor and its representatives adequate facilities for inspecting materials at the site or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment.
- 8.8.1** The Subcontractor shall furnish to the Contractor, in such detail and as often as required, full reports of the progress of the Subcontractor's Work irrespective of the location of such work.
- 8.9 CLEANUP.** The Subcontractor shall follow the Contractor's cleanup and safety directions, and
- a. at all times keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and
 - b. broom clean each work area prior to discontinuing work in the same.
 - c. it is agreed that the Subcontractor shall keep all adjacent streets clear of mud and debris caused by its operations.
- 8.9.1** If the Subcontractor fails to immediately commence compliance with cleanup duties within twenty-four (24) hours after written notification from the Contractor of noncompliance, the Contractor may implement such cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due the Subcontractor.

- 8.10 SAFETY.** The prevention of accidents on or in the vicinity of its Work is the Subcontractor's responsibility, even if Contractor establishes a safety program for the entire Project. Subcontractor shall establish a safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and at a minimum those safety requirements of the Contractor as reflected in the Safety Exhibit attached hereto or otherwise provided and Owner, including, but not limited to, requirements imposed by the Contract Documents. The existence of a safety program established by the Contractor and/or Owner or its use by the Subcontractor on the Project does not relieve the Subcontractor of its responsibility for safety on the Project. Any such Subcontractor use or the mere existence of a Contractor or Owner safety program shall not be construed to create any third party obligations on the Contractor or Owner as it relates to the Subcontractor obligations under this Agreement. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Work which Contractor deems unsafe until corrective measures satisfactory to Contractor shall have been taken. Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of the responsibility therefore. Subcontractor shall notify Contractor immediately following any accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor. Subcontractor shall indemnify Contractor for fines, damages or expenses incurred by the Contractor because of the Subcontractor's failure to comply with safety requirements. The Contractor shall have the right to withhold from payment due the Subcontractor fines, which are assessed, and expense it incurs as a result of the Subcontractor's violation of any safety rule or regulation for the Project.
- 8.11 REGULATORY CHANGES.** To the extent obtained by the Contractor under the Contract Documents, the Subcontractor shall be compensated for additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of the Agreement.
- 8.12 SUBCONTRACTOR ASSIGNMENT OF WORK.** The Subcontractor shall not assign the whole nor any part of the Subcontractor's Work without prior written approval of the Contractor. The Contractor's approval shall not be unreasonably withheld. Lower-tier subcontractors and suppliers previously approved by the Contractor may be listed at Paragraph 17.3.
- 8.12.1** If any Subcontractor or Sub-subcontractor desires to obtain the services of any other Subcontractor or Sub-subcontractor, the party required to do the work shall become a Subcontractor or Sub-subcontractor under the party who has hired him, and shall be subject to all provisions of the Contract Documents which pertain to Subcontractors and Sub-subcontractors as applicable.
- 8.13 NON-CONTRACTED SERVICES.** The Subcontractor agrees, except as otherwise provided in this Agreement, that no claim for non-contracted construction services rendered or materials furnished shall be valid unless the Subcontractor provides the Contractor notice:
- prior to furnishing of the services or materials, except in an emergency affecting the safety of persons or property;
 - in writing of such claim within five (5) days of first furnishing such services or materials; and
 - the written charge for such services or materials no later than the fifteenth (15th) day of the calendar month following that in which the claim originated.
- 8.14 MATERIALS SAFETY.** To the extent that the Contractor is not obligated by the Contract Documents or by law to perform work which involves pollutants, hazardous or toxic substances, hazardous waste, asbestos or PCB's, the Subcontractor likewise is not obligated. To the extent that the Contractor has obligations under the Contract Documents or by law regarding such materials within the scope of the Subcontractor's work, the Subcontractor likewise shall have these obligations.

ARTICLE 9

SUBCONTRACT PROVISIONS

- 9.1 LAYOUT RESPONSIBILITY AND LEVELS.** The Contractor shall establish principal axis lines of the building and site whereupon the Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to set out or perform its work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details shall result in alignment of finish surfaces. Notwithstanding the dimensions given on the Plans, Specifications and other Contract Documents, it shall be the obligation and responsibility of the Subcontractor to take such measurements as will insure the proper matching and fitting of the Work covered by this Agreement with contiguous work
- 9.1.1** The Architect/Engineer is not authorized to make any changes or modifications in the Contract Documents, to direct additional work not required therein, nor to waive the performance by Subcontractors of any requirements of the Contract Documents except as specifically approved and authorized by the Contractor.
- 9.1.2** No Subcontractor shall deal directly with the Architect/Engineer. All transmittals, requests, correspondence and communications will be through the Contractor, who will be responsible for obtaining the information requested.
- 9.2 WORKMANSHIP.** Every part of the Subcontractor's Work shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the highest quality, and all materials used in the Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.
- 9.3 MATERIALS FURNISHED BY OTHERS.** In the event the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to acts of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.
- 9.4 SUBSTITUTIONS.** No substitutions shall be made in the Subcontractor's Work unless permitted in the Contract Documents and only then upon the Subcontractor first receiving all approvals required under the Contract Documents for substitutions. The Subcontractor shall indemnify the Contractor as a result of such substitutions, whether or not the Subcontractor has obtained approval thereof.
- 9.5 USE OF CONTRACTOR'S EQUIPMENT.** The Subcontractor, its agents, employees, subcontractors or suppliers shall not use the Contractor's equipment without the express written permission of the Contractor's designated representative.
- 9.5.1** If the Subcontractor or any of its agents, employees, suppliers or lower-tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of the Contractor, the Subcontractor shall defend, indemnify and be liable to the Contractor as provided in Article 12 for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely to the negligence of the Contractor's employees operating such equipment.
- 9.6 CONTRACT BOND REVIEW.** The Contractor's Payment Bond for the Project, if any, may be reviewed and copied by the Subcontractor.
- 9.7 OWNER ABILITY TO PAY.** The Subcontractor shall have the right to receive from the Contractor such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Work.
- 9.8 PRIVACY.** Until final completion of the Project, the Subcontractor agrees not to perform any work directly for the Owner or any tenants thereof, or deal directly with the Owner's representatives in connection with the Project, unless otherwise directed in writing by the Contractor. All Work for this Project performed by the Subcontractor shall be processed and handled exclusively by the Contractor.
- 9.9 SUBCONTRACT BOND.** If a Performance and Payment Bond is not required of the Subcontractor under Article 17, then within the duration of this Agreement, the Contractor may require such bonds before work is started and the Subcontractor shall provide the same.

- 9.9.1** Said bonds shall be in the full amount of this Agreement in a form and by a surety satisfactory to the Contractor.
- 9.9.2** The Subcontractor shall be reimbursed without retainage for cost of same simultaneously with the first progress payment hereunder.
- 9.9.3** The reimbursement amount for the bonds shall be in the full amount of the Subcontract Agreement, including any changes thereto.
- 9.9.4** In the event the Subcontractor shall fail to promptly provide such requested bonds, the Contractor may terminate this Agreement and re-let the work to another subcontractor and all Contractor costs and expenses incurred thereby shall be paid by the Subcontractor.
- 9.10** **WARRANTY.** The Subcontractor warrants that the Subcontract Work will be free from all deficiencies and defects in materials and/or workmanship and as called for in the Contractor Documents. The Subcontractor warrants that all the materials, furnished by it, for incorporation into the Project shall fully conform in all respects to the Contract Documents and will be new unless otherwise specified in the Contract Documents or this Subcontract Agreement. The Subcontractor further warrants that the Work furnished under this Subcontract Agreement shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these standards will be considered defective. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.
- 9.10.1** The Subcontractor agrees to satisfy such warranty obligations which appear within the warranty period established in the Contract Documents or prescribed by law without cost to the Owner or the Contractor.
- 9.10.2** If no warranty is required of the Contractor in the Contract Documents, then the Subcontractor shall warrant its work as described above for the period prescribed by law but in no case for less than the period of one year from the date(s) of substantial completion of all or a designated portion of the Subcontractor's Work or acceptance or use by the Contractor or Owner of designated equipment, whichever is sooner.
- 9.10.3** The Subcontractor further agrees to execute any special warranties that shall be required for the Subcontractor's Work prior to final payment.
- 9.11** **NOTICE.** Wherever the Contract Documents require the Contractor or Subcontractor to give "Notice" or "Timely Notice" to the Architect/Engineer, Public Authority, and/or others, it shall be the Subcontractor's responsibility to furnish all such notices sufficiently in advance to allow the party receiving the notice, reasonable time to react to such notice, including travel time to the job site as necessary, when such notices require the on-site presence of the Architect/Engineer, Public Authority, their authorized representatives, or others for field observation of inspections, testing or approvals. Reasonable time shall be defined as no less than 48 hours plus normal travel time from the home office of the party being notified, to the job site. Contractors shall act expeditiously to give timely notice for all inspections for the purpose of securing approvals in order to insure progress of the Work and to maintain the project schedule.
- 9.12** **WORKPLACE WEAPONS POLICY.** The Contractor has a company policy that prohibits carrying a firearm or weapon of any kind on its premises and its project sites. Except as prohibited by law, or permitted by compliance with the Contractor's policy carrying of a firearm or other weapons while performing work for the Contractor is prohibited. The Contractor reserves the right to conduct searches for weapons on its property and its project sites. Violators will be removed from the project site or premises of the Contractor and the subcontract may be terminated for cause. Subcontractor is expected to advise all its employees and sub-subcontractors and vendors of Contractor's policy regarding workplace weapons. Vehicles parked on the premises of the Contractor or those under the control of the Contractor may be searched. Possession of a valid concealed weapon permit authorized by any governmental entity is not an exemption under this policy.
- 9.13** **RIGHT TO AUDIT.** Subcontractor guarantees that the individuals employed by Subcontractor in any capacity, including but not limited to, employees, subcontractors and independent contractors, are authorized to work in the United States. Subcontractor represents that it has completed the I-9 verification process for all individuals Subcontractor has performing services for Contractor. Contractor maintains the right to audit the Form I-9s for all individuals Subcontractor has performing services for Contractor every six (6) months. Contractor will provide Subcontractor with five (5) days advanced written notice of its intent to perform a Form I-9 audit. In response to Contractor's audit request, Subcontractor shall provide copies of all Form I-9s and any supporting documentation for all individuals who Subcontractor had performing services for Contractor at any time subsequent to the date upon which Contractor gave notice of the preceding Form I-9 audit.
- 9.13.1** The Subcontractor agrees to indemnify Contractor in accordance with Article 13 of this Agreement for any issue arising out of Subcontractor's hiring or retention of any individual who is not authorized to work in the United States.

ARTICLE 10 CONFIDENTIALITY OF INFORMATION

- 10.1** The Contractor acknowledges and agrees that in connection with the performance of this Agreement, Contractor will be providing information, including but not limited to, Contractor's confidential and proprietary information to the Subcontractor, which may or may not be designated as confidential by Contractor.
- 10.2** The Subcontractor agrees to hold the confidential information disclosed to it in confidence, to cause its employees, agents, or contractors provided the information to hold such confidential information in confidence, and to the greatest possible standard of care used to protect the confidentiality of the confidential information. The Subcontractor agrees to limit disclosure of the confidential information to those employees, agents, subcontractors, consultants, materialmen or suppliers to perform the Subcontractor's obligation under this Agreement who have all also agreed in writing to be bound by the obligations regarding confidentiality in this Section.
- 10.3** The Subcontractor, as well as its subcontractors, consultants, materialmen, its employees, agents, or suppliers shall not disclose any confidential information to others or use said confidential information for any other purpose other than to perform its obligation under this Agreement.
- 10.4** The Subcontractor agrees that the foregoing obligations of maintaining the confidentiality of confidential information and non-use of confidential information shall last during the term of this Agreement and for five (5) years following the termination of this Agreement.
- 10.5** If the Subcontractor breaches the terms of this Section, Contractor shall have the right to (a) terminate this Agreement without prior notice; (b) seek to recover its actual damages incurred by reason of said breach, including, without limitation, its attorneys' fees and costs of suit (c) seek to obtain injunctive relief to prevent such breach or to otherwise enforce the terms of this Section; and (d) pursue any other remedy available at law or in equity.

ARTICLE 11 RECOURSE BY CONTRACTOR

11.1 FAILURE OF PERFORMANCE.

- 11.1.1** **NOTICE TO CURE.** If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work, or it fails to make prompt payment for its workers, lower-tier subcontractors or suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within forty-eight (48) hours after written notification to commence and continue satisfactory correction of such default with diligence and promptness, then the Contractor without prejudice to any rights or remedies it may have, shall have the right to any or all of the following remedies:

- a. supply such number of workers and quantity of materials, equipment and other facilities as the Contractor deems necessary for the completion of the Subcontractor's Work; or any part thereof which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the prompt payment of same including reasonable overhead, profit and attorneys' fees;
 - b. contract with one or more additional contractors, to perform such part of the Subcontractor's Work as the Contractor shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to the Subcontractor;
 - c. withhold payment of any moneys that may otherwise be or become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the complete satisfaction of the Contractor and Owner or Owner's designated representative; and
 - d. in the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice.
- 11.1.2 TERMINATION BY CONTRACTOR.** If the Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after written notification issued under Subparagraph 11.1.1, then the Contractor may, in lieu of or in addition to Subparagraph 11.1.1, issue a second written notification, to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a default within seven (7) days of the written notification, the Agreement will be deemed terminated and the Contractor may use any materials, implements, equipment, appliances or tools furnished by or belonging to the Subcontractor to complete the Subcontractor's Work.
- a. The Contractor also may furnish those materials, equipment and/or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work.
 - b. All costs incurred by the Contractor in performing the Subcontractor's Work, including reasonable overhead, profit and attorneys' fees, shall be deducted from any moneys that may otherwise be due or to become due the Subcontractor. The Subcontractor shall be liable for the prompt payment of any amount by which such expense may exceed the unpaid balance of the Contract Amount.
- 11.1.3** In addition to any other rights Contractor may have at law or under this Agreement with respect to cancellation or termination, Contractor may terminate this Agreement for its convenience as to all or any part of the Work for which Subcontractor's performance is not yet completed by giving notice of termination to Subcontractor. In the event Subcontractor is not in default under this Agreement at the time such notice is given, Contractor will make an equitable termination payment to Subcontractor based on the proportion of the Work properly completed, the costs expended or unavoidably incurred in connection with the terminated Work, excluding any profit on work which has not been performed through the date notice of termination is issued. Such payment shall not exceed that fraction of the total Amount which is allocable to the Work performed. Subcontractor shall submit his claim for a termination payment within thirty (30) days after receiving notice of termination, and shall take prompt action to minimize costs which form part of the claim.
- 11.2 BANKRUPTCY.**
- 11.2.1 TERMINATION ABSENT CURE.** If Subcontractor files a petition under the Bankruptcy Code, is adjudged bankrupt or insolvent, or a petition or proceeding for bankruptcy shall be filed against Subcontractor, or Subcontractor shall make a general assignment for the benefit of creditors or files or has filed a petition in bankruptcy, or Subcontractor shall consent to the appointment of a receiver or trustee in bankruptcy (collectively a "Bankruptcy Event"), this Agreement shall immediately terminate without further notice if (1) the Subcontractor or the Subcontractor's trustee rejects this Agreement or, (2) there has been a default, (3) the Subcontractor is unable to give adequate assurance that the Subcontractor will fully and completely perform as required by this Agreement or (4) Subcontractor otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code or other insolvency laws and regulations.
- 11.2.2 INTERIM REMEDIES.** If the Subcontractor is not performing in strict accordance with the Schedule of Work at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work.
- 11.2.3** The Contractor may offset against any amounts that otherwise may be due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorneys' fees.
- 11.2.4** The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Amount.
- 11.3 SUSPENSION, TERMINATION.**
- 11.3.1 SUSPENSION BY OWNER.** Should the Owner suspend its contract with the Contractor or any part which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and upon written notification the Subcontractor shall immediately suspend the Subcontractor's Work.
- 11.3.1.1** In the event of such Owner suspension, the Contractor's liability if any to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents.
- 11.3.1.2** The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute said claim, in the name of the Contractor, for the use and benefit of the Subcontractor.
- 11.3.2 TERMINATION BY OWNER.** Should the Owner terminate its contract with the Contractor or any part which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontractor's Work, follow all of Contractor's instructions, and mitigate all costs, expense, and incurrence of damages.
- 11.3.2.1** In the event of such Owner termination, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery from the Owner on the Subcontractor's behalf under the Contract Documents.
- 11.3.2.2** The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute said claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.
- 11.3.3 CONTINGENT ASSIGNMENT OF SUBCONTRACT.** The Contractor's contingent assignment of the Subcontract to the Owner, if provided in the Contract Documents, is effective when the Owner (a) has terminated the Contract between the Owner and the Contractor for cause and (b) has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Contractor's bond, if any. Subcontractor hereby consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement.
- 11.3.4 SUSPENSION BY CONTRACTOR.** The Contractor may order the Subcontractor in writing to suspend, delay, or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Phased or interrupted Work when required shall not be deemed a suspension of Work.
- 11.3.5** The Subcontractor shall notify the Contractor in writing within five (5) calendar days after receipt of the Contractor's order of the effect of such order upon the Subcontractor's Work. To the extent allowed the Contractor under the Contract Documents, the Contract Amount or contract time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by suspension, delay, or interruption.
- 11.3.6** No claim under this Article shall be allowed for any costs incurred more than five (5) calendar days prior to the Subcontractor's notice to the Contractor.

- 11.3.7 Neither the Contract Amount nor the contract time shall be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed, or interrupted by the fault or negligence of the Subcontractor or by a cause for which Subcontractor would have been responsible.
- 11.3.8 The Contract Amount shall not be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been suspended, delayed or interrupted by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.
- 11.3.9 **WRONGFUL EXERCISE.** If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit on the Work performed, less prior payments made, and Contractor's attorneys' fees.

ARTICLE 12 LABOR RELATIONS

- 12.1 **INCORPORATED AGREEMENTS.** Any conditions, obligations or requirements relative to labor relations and their effect on the Project shall be incorporated in this Agreement by reference and attached hereto as an Exhibit.

ARTICLE 13 INDEMNIFICATION

- 13.1 **SUBCONTRACTOR'S PERFORMANCE.** To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless, the Contractor (including the Contractor's affiliates, parents and subsidiaries, their agents and employees) and other contractors and subcontractors and all of their agents and

employees and when required of the Contractor by the Contract Documents, the Owner, the Architect/Engineer, Architect/Engineer's consultants, agents and employees from and against all actions, causes of action, claims, demands, liabilities, losses, judgments, damages, fines, penalties or expenses and charges of any kind or nature caused in whole or in part by the Subcontractor or any entity or person under the control of the Subcontractor (a "Claim") including, without limitation, any interest, reasonable attorneys' fees and other costs, expenses and charges which Continental may at any time incur, sustain, or become subject to by reason of any Claim or Claims arising, directly or indirectly, from or in connection with:

1. Personal injury;
2. Sickness, disease or death;
3. Injury to or destruction of property;
4. Hiring or retaining of employees, subcontractors and/or independent contractors who are not authorized to work in the United States;
5. Failure to comply with Form I-9 verification;
6. Subcontractor's acts or omissions beyond the scope of its authority under this Agreement, including, without limitation, any injury (whether to body, property of personal or business character or reputation) sustained by any person or organization or to any person or to property;
7. Any breach of any representation or warranty made by the Subcontractor in this Agreement

Such obligation to indemnify and hold harmless shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article 13.

If a Claim is asserted against Contractor by a third party, and such Claim is covered by the indemnification provisions of this Paragraph or of any other provision of this Agreement and Contractor elects to invoke such indemnification provisions, then Contractor shall give to the Subcontractor reasonably prompt notice in writing of such Claim. Upon written notice to Contractor that the Subcontractor intends to defend against such Claim, then the Subcontractor shall have the right to control the defense of such Claim as well as any settlement or compromise thereof, provided that the Subcontractor will diligently pursue with competent counsel the defense thereof, will keep Contractor informed as to the progress of the defense and will not settle such Claim if the settlement results in any liability or imposes any affirmative obligations on Contractor. Notwithstanding anything herein to the contrary, Contractor shall have the right to participate in the defense of such claim at its own expense. This Paragraph shall survive the termination of this Agreement.

- 13.2 **NO LIMITATION UPON LIABILITY.** In any and all claims against the Owner, the Architect/Engineer, Architect/Engineer's consultants, agents and employees, the Contractor (including its affiliates, parents and subsidiaries) and other contractors or subcontractors, or any of their agents or employees, by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone from whose acts the Subcontractor may be liable, the indemnification obligation under this Article 13 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 13.3 **ARCHITECT/ENGINEER EXCLUSION.** Except as provided by the Contract Documents, the obligation of the Subcontractor under this Article 13 shall not extend to the liability of the Architect/Engineer, the Architect/Engineer's consultants, agents or employees of any of them, arising out of
- a. the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or
 - b. the giving of or the failure to give directions or instructions by the Architect/Engineer, the Architect/Engineer's Consultants, and agents or employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.
- 13.4 **COMPLIANCE WITH LAWS.** The Subcontractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as "laws") applicable to the Subcontractor including, but not limited to, all employment laws, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety, and all other laws with which the Contractor must comply according to the Contract Documents. By execution of this Subcontract Agreement the Subcontractor certifies that it is its intent to only use workers in the performance of its obligations hereunder that are legally authorized to work in the United States.
- 13.4.1 The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.
- 13.4.2 The governing law related to the Work shall mean codes or regulations of the State, County, and local municipality where the Project is situated; also, any regulation or requirement of utility companies and insurance companies having jurisdiction of the Work, whether such regulations are legally mandatory or not, if same are binding upon the Owner. Each trade engaged on the Project shall also be bound by National Codes and standards which apply to materials and practices applying to such respective trades. If, and to the extent that any provision of this Contract shall be unlawful or contrary to public policy, the same shall not be deemed to invalidate or otherwise affect the other provisions hereof. The law governing the interpretation and enforcement of this Agreement shall be that of the jurisdiction where the office of the Contractor is located as shown on this Agreement.
- 13.5 **PATENTS.** Except as otherwise provided for in the Contract Documents, the Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or licensed materials in the Subcontractor's Work. The Subcontractor shall defend all suits for claims for infringement of any patent or similar rights arising out of the Subcontractor's Work, which may be brought against the Contractor or Owner, and shall be liable to the Contractor and Owner for all loss, including all costs, expenses, and attorneys' fees.

ARTICLE 14 INSURANCE

14.1 Prior to the start of Subcontractor's Work, Subcontractor and its subcontractors shall at their own expense procure and maintain insurance in compliance with the minimum insurance terms and general conditions as set forth below. Additionally, subcontractors and its subcontractors shall comply with any insurance obligations as set forth in the contracts between Owner and Contractor, its subsidiaries and affiliates, and/or by the State in which the Subcontractor's Work is being performed.

A. General Liability:

Per Occurrence	\$1,000,000
General Aggregate	\$1,000,000
Products and Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Medical Payments	\$5,000

Additional requirements:

- "Continental Building Systems, its subsidiaries and affiliates: along with any and all other parties required by the contract are to be Additional Insureds on subcontractor's policy per Insurance Services Office (ISO) forms:
 - CG 20 10 11 85 **or an equivalent form**
 - Or
 - CG 20 10 10 01 (premises operations) and CG 20 37 10 01 (completed operations) **or equivalent forms.**

- Copy of the Insurance Carrier Endorsement(s) evidencing this requirement either on a blanket basis (where required by written agreement), or naming "Continental Building Systems, its subsidiaries and affiliates" along with any other Additional Insureds (where required) must be included.
- Waiver of Subrogation in favor of all Additional Insureds is required. Copy of the Insurance Carrier Endorsement evidencing this requirement must be included.
- Subcontractor's insurance is primary and non-contributory as respects all insurance maintained by Contractor and any other Additional Insureds. Copy of the Insurance Carrier endorsement evidencing this requirement must be included.
- Products and Completed Operations Insurance to be maintained after Subcontractor's work is completed.
- Contractual Liability Insurance insuring the obligations assumed by Subcontractor in this Agreement must be provided.

B. Automobile Liability:

Per Accident	\$1,000,000 combined single limit
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Additional requirements:

- Subcontractor's liability insurance to apply to all owned, non-owned, hired and borrowed vehicles.
- "Continental Building Systems, Its subsidiaries and affiliates" along with any and all other parties required by contract are to be Additional Insureds. Copy of the Insurance Carrier Endorsement evidencing this requirement must be included.
- Waiver of Subrogation in favor of all Additional Insureds is required. Copy of the Insurance Carrier Endorsement evidencing this requirement must be included.

C. Workers' Compensation:

State	Statutory
Employers Liability (including Ohio Stop Gap)	\$1,000,000 Each Accident
Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 Each Employee

Additional requirements:

- Where permitted by law, Waiver of Subrogation in favor of all Additional Insureds. Copy of the Insurance Carrier Endorsement evidencing this requirement must be included.

D. Umbrella/Excess

Per Occurrence	\$1,000,000
General Aggregate	\$1,000,000
Products and Completed Operations Aggregate	\$1,000,000

Additional requirements:

- Subcontractor's insurance is primary and non-contributory as respects all insurance maintained by Contractor and any other Additional Insured.

14.1.1 CANCELLATION, RENEWAL OR MODIFICATION. The Subcontractor shall maintain in effect all insurance coverage required under this Agreement at the Subcontractor's sole expense and with insurance companies with a financial rating of at least A- VII as defined by AM Best Company and otherwise acceptable to the Contractor.

14.1.2 Subcontractor and its insurers shall provide at least 30 days written notice of cancellation, non-renewal or material alteration of the required insurance. Copy of the Insurance Carrier Endorsement evidencing this requirement must be included.

14.1.3 Subcontractor shall provide a Certificate of Insurance that complies with the insurance requirements noted above to the Contractor prior to the commencement of the Subcontractor's Work. Copies of Insurance Carrier(s) Endorsements for Additional Insured, Waiver of Subrogation and Cancellation must be attached to the Certificate.

14.1.4 In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage and charge the expense thereof to the Subcontractor, or terminate this Agreement.

14.2 PROFESSIONAL LIABILITY INSURANCE. Subcontractor shall carry Professional Liability insurance for any design undertaken by Subcontractor or anyone on behalf of the Subcontractor. The limits of liability shall be not less than \$1,000,000. The Contractor and Owner shall not be included as additional insured on such policies.

14.3 NUMBER OF POLICIES. Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

- 14.4 INSURANCE REQUIREMENTS FOR SUB-SUBCONTRACTORS.** The Subcontractor shall ensure that all tiers of their Subcontractors shall procure and maintain insurance in like form and amounts including the Additional Insured requirements, all as set forth above. Copies of the certificates must be provided prior to the sub-subcontractors entering the jobsite(s).
- 14.5 WAIVER OF RIGHTS.** The Contractor and Subcontractor waive all rights against each other and the Owner, the Architect/Engineer, the Architect/Engineer's consultants and agents or employees of any of them, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or to the extent covered by any other property or equipment insurance during the course and within the scope of construction, except such rights as they may have to the proceeds of such insurance; provided, however, that such waiver shall not extend to the acts of the Architect/Engineer, the Architect/Engineer's consultants, and the agents or employees of any of them listed in Paragraph 13.3.
- 14.7.1** Upon written request of the Subcontractor, the Contractor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other equipment insurance in force for the Project and procured by the Contractor. The Subcontractor shall satisfy itself to the existence and extent of such insurance prior to commencement of the Subcontractor's Work.
- 14.7.2** If the Owner or Contractor have not purchased Builder's Risk insurance for the full insurable value of the Subcontractor's Work less a reasonable deductible the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors and their subcontractors in the Work, and, by appropriate Subcontractor Change Order, the cost of such additional insurance shall be reimbursed to the Subcontractor.
- 14.7.3** If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for portions of the Subcontractor's Work stored off the site or in transit, when such portions of the Subcontractor's Work are to be included in an application for payment under Article 5.
- 14.7.4** The responsibility to insure the Subcontractor's on-site equipment exclusively lies with the Subcontractor.
- 14.8 ENDORSEMENT.** If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.
- 14.9 ACCEPTANCE OF SUBCONTRACTOR INSURANCE.** The required insurance shall be subject to the approval of Continental Building Systems, but any acceptance of insurance certificates by Continental Building Systems shall in no way limit or relieve Subcontractor of the duties and responsibilities by Subcontractor in the Continental Building Systems Subcontractor Agreement.

ARTICLE 15 DISPUTE RESOLUTION

- 15.1 INITIAL DISPUTE RESOLUTION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties may endeavor to settle the dispute first through direct discussion. If the dispute cannot be settled through direct discussions, the parties may endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to litigation. Mediation will be commenced within 60 days of the request to mediate a dispute presented in writing to the parties. The time limits for any subsequent litigation will be extended for the duration of the mediation process plus ten (10) days or as otherwise provided in the Contract Documents. The location of the mediation shall be the Contractor's home office.
- 15.2 LITIGATION.** Litigation. All claims, disputes and matters in question arising out of, or relating to, this Agreement or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, and the claims described in Paragraph 15.2, shall be decided by litigation but subject to initial dispute resolution as prescribed in paragraph 15.1. To the extent not otherwise mandated by the law of the jurisdiction where the Project is located, any such litigation shall be subject to the authority of a court of competent jurisdiction where the office of the Contractor is located as shown on this Agreement to which jurisdiction the Subcontractor hereby agrees. Every such suit shall be commenced not later than one (1) year from the date when the cause of action accrued or three (3) months after the Subcontractor last performs work on the Project, whichever shall occur first.
- 15.3 WORK CONTINUATION AND PAYMENT.** Unless otherwise agreed in writing, the Subcontractor shall carry on the Work and maintain the Schedule of Work pending meditation and/or litigation. If the Subcontractor is continuing to perform, the Contractor shall continue to make payments in accordance with this Agreement.
- 15.4 NO LIMITATION OF RIGHTS OR REMEDIES.** Nothing in this Article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds.

ARTICLE 16 CONTRACT INTERPRETATION

- 16.1 INCONSISTENCIES AND OMISSIONS.** Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of the Subcontractor to so notify the Contractor in writing within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of said notice, the Contractor shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with the Contractor's instructions.
- 16.2 LAW AND EFFECT.** The law governing the interpretation and enforcement of this Agreement shall be that of the jurisdiction where the office of the Contractor is located as shown on this Agreement, but regardless of the location of the office of the Contractor, the execution and delivery of this Agreement shall be undertaken under and governed by the provisions of the Ohio Electronic Transactions Act, Ohio Code §§ 1306.01 – 1306.15 (as amended, the "Electronic Transactions Act"). For the settlement of work jurisdictional disputes, decisions, or interpretations of the National Labor Relations Board will be immediately accepted and complied with by both the Contractor and Subcontractor.
- 16.3 SEVERABILITY AND WAIVER.** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.
- 16.4 ATTORNEYS' FEES.** Should either party employ an attorney to institute suit or other litigation to enforce any of the provisions hereof, to protect its interest in any matter arising under this Agreement, to collect damages for the breach of the Agreement, or to recover on a surety bond given by a party under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, charges, and expenses expended or incurred therein. For the purpose of the application of this provision, the court shall determine the prevailing party as follows: the prevailing party shall be that party who's last written settlement position (demand/offer) made before the commencement of the litigation is closest to the final award. In order to be considered for the purpose of this provision, any settlement position (demand/offer) must be in writing and must have been delivered by certified mail to the other party. It is the intent of this provision for the court to identify the true party prevailing in any litigation proceeding. To that end, in the event that a party seeking relief has not taken a settlement position, the court shall consider the settlement demand to be the full relief requested in the litigation demand. Where there are mixed claims and counterclaims, the determination of the prevailing party shall be within the discretion of the court consistent with the intent of this provision.
- 16.5 TITLES.** The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

- 16.6 ENTIRE AGREEMENT.** Unless modified in writing pursuant to the terms and conditions herein, this Agreement constitutes the entire agreement between the parties hereto. No oral representations or other agreements have been made by Contractor except as stated in this Agreement upon which the Subcontractor has relied in entering this Agreement. This Agreement may not be changed in any way except as herein provided, and no term or provision hereof may be waived by Contractor except in writing signed by its duly authorized officer or agent. The marginal descriptions of any term or provision of this Agreement are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof. As to any notice, consent, agreement or change order referenced or provided for under this Agreement, the parties intend and hereby agree that the relevant document may be issued and accepted (and may thus become binding) through either a signed paper document or through transmission of the relevant document with electronic signature undertaken through agreed-upon methods in accordance with the Electronic Transactions Act.
- 16.7 RIGHTS AND REMEDIES.** The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No act or failure to act by Contractor shall be deemed a waiver or modification of the Contractor's rights and remedies pursuant to this Agreement in regards to any other similar, subsequent or analogous situation on the Project between Contractor and Subcontractor. Subcontractor further agrees that any act or failure to act by Contractor shall not be deemed as approval or acquiescence to Subcontractor's actions except as may be specifically agreed to in writing by Contractor.

ARTICLE 17 SPECIAL PROVISIONS

- 17.1 PRECEDENCE.** It is understood the work to be performed under this Agreement, including the terms and conditions thereof, is as described in Articles 1 through 16 together with the following Special Provisions, which are intended to complement same.
- 17.1.1** This Subcontract Agreement is subject to the approval of the Subcontractor by the Owner.
- 17.2 COMMON TEMPORARY SERVICES.** The following "Project" common temporary services and/or facilities are for the use of all project personnel and shall be furnished as herein below noted:
- The Subcontractor shall unload and hoist all of its materials, supplies, tools and equipment in order to ensure the timely completion of his Work. Unless noted otherwise in the Contract Documents, or elsewhere in this Subcontract Agreement, the Contractor shall provide the following temporary facilities and services: (a) temporary toilet facilities, (b) temporary construction water, (c) temporary electric provided to the project by the electrical Sub-Contractor, (d) temporary bench marks. The Subcontractor shall, at his own expense, provide any other temporary facilities necessary for the performance of his Work. In addition, the Subcontractor shall provide the following temporary Facilities and services:
- Temporary facilities and services provided by others:
- _____
- After obtaining the Contractor's approval, the Subcontractor shall have free, non-exclusive use of any temporary roadways, shoring, equipment pads, and scaffolding, provided by the Contractor, whenever these temporary facilities are available and adequate. The Contractor assumes no responsibility for the fitness or adequacy of these temporary facilities for the performance of the Subcontractor's Work.
- 17.3 OTHER SPECIAL PROVISIONS.**
- _____
- 17.4 CONTRACT DOCUMENTS.** Refer to Exhibit A hereto (List applicable Contract Documents including specifications, drawings, addenda, modifications and exercised alternates. Identify with general description, sheet numbers and latest date including revisions.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal, the day and year first above written.

CONTRACTOR
Continental Building Systems

SUBCONTRACTOR:
SC Name

THIS AGREEMENT IS BEING EXECUTED AND DELIVERED BY CONTINENTAL BUILDING SYSTEMS AND SUBCONTRACTOR THROUGH ELECTRONIC SIGNATURES UNDERTAKEN IN ACCORDANCE WITH A METHOD SPECIFIED BY CONTINENTAL BUILDING SYSTEMS UNDER AND PURSUANT TO THE PROVISIONS OF THE ABOVE-REFERENCED ELECTRONIC TRANSACTIONS ACT. THE ELECTRONIC SUBMISSION AND ACCEPTANCE OF THIS AGREEMENT (IN ACCORDANCE WITH THE PROCESS DESIGNATED BY CONTINENTAL BUILDING SYSTEMS) IS ACKNOWLEDGED AND AGREED BY CONTINENTAL BUILDING SYSTEMS AND SUBCONTRACTOR AS STANDING IN LIEU OF PAPER SIGNATURES AND BE FULLY BINDING UPON AND ENFORCEABLE AGAINST THE PARTIES, NOTWITHSTANDING THE LACK OF PAPER SIGNATURES. CONTINENTAL BUILDING SYSTEMS NEVERTHELESS RESERVES THE RIGHT TO REQUIRE THAT THE PARTIES EXECUTE AND DELIVER PAPER SIGNATURES IF IT DEEMS NECESSARY OR CONVENIENT FOR RECORD-KEEPING PURPOSES.