

SUBCONTRACT & INDEMNITY AGREEMENT No:

THIS AGREEMENT ("Subcontract") is made and entered effective this day of 2017, by and between **TRIBBLE & STEPHENS CONSTRUCTION, LTD. ("T&S")** and ("Subcontractor"), to perform part of the Work on the following Project:

PROJECT:

OWNER:

ARCHITECT:

T&S has made a Contract for Construction ("Prime Contract") dated the with the Owner which provides for the furnishing of all labor, materials, equipment and services in connection with the construction of the Project. Unless otherwise provided herein, capitalized terms have the same meaning as those terms defined in the Prime Contract. T&S and Subcontractor agree as follows:

ARTICLE 1

SCOPE OF WORK

1.1 T&S employs Subcontractor as an independent contractor, to perform the following part of the Work which T&S has contracted with Owner to provide on the Project ("Subcontractor's Work"):

RETAIL BUILDINGS

Subcontractor agrees to perform Subcontractor's Work under the general direction of T&S and subject to the final approval of the Architect or other specified representative of Owner. Subcontractor will furnish all of the labor, materials, equipment and services, including without limitation, competent supervision, shop drawings, and samples, tools, equipment, protection, hoisting, scaffolding, and permits which are necessary for such performance.

1.2 (a) The Subcontract Documents consist of:

1. This Subcontract, consisting of this Subcontract form and the following attachments:

Attachment A: Additional Terms and Conditions;

Attachment B: Plan List;

Attachment C: Insurance;

Attachment D-I-A: **CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT;**

Attachment D-I-B: **UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT;**

Attachment D-I-C: CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT;
Attachment D-I-D: UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT;
Attachment E: Subcontractor's/Supplier's Application for Payment;
Attachment F: Best Management Practices Required by the SWPPP;
Under separate email attachment T&S Corporate Quality Management Manual

2. The Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein, including, without limitation, the General Conditions;

3. Modifications issued subsequent to the execution of the Prime Contract, whether before or after the execution of this Subcontract; and,

4. Modifications to the Subcontract issued subsequent to its execution. The above documents form the entire subcontract agreement, and are as fully a part of the Subcontract as if attached hereto and incorporated herein for all purposes.

(b) T&S and Subcontractor mutually bind themselves to the terms and conditions of this Subcontract, and the provisions of the Prime Contract, including without limitation the General Conditions therein, shall apply to the Subcontractor's Work. T&S shall assume towards Subcontractor all the obligations and responsibilities that the Owner, under the Prime Contract, assumes towards T&S and the Subcontractor shall assume towards T&S all of the obligations and responsibilities which the Contractor, under the Prime Contract, assumes towards the Owner and Architect. T&S shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under the Prime Contract, has against T&S and Subcontractor shall have the benefit of all rights, remedies and redress against T&S that T&S, under the Prime Contract, has against the Owner, insofar as applicable to this Subcontract. The Prime Contract, excluding financial data, and all other Contract Documents listed therein, along with this Subcontract and all attachments listed above, have been made available to and read by Subcontractor. In the case of any conflict between this Subcontract and the Prime Contract, Subcontractor shall be bound by the more stringent requirement as determined by T&S, in its sole discretion.

(c) T&S hereby requires that Subcontractor enter into agreements with its Sub-subcontractors performing portions of the Subcontractor's Work by which the Subcontractor and Sub-subcontractor are mutually bound to the terms and conditions of this Subcontract and the provisions of the Prime Contract, including without limitation the General Conditions therein, shall apply to the Sub-subcontractor's Work. Both Subcontractor and its Sub-subcontractors shall mutually assume towards each other all obligations and responsibilities that T&S and Subcontractor assume towards each other and have the benefit of all rights, remedies and redress each against the other which T&S and Subcontractor have by virtue of this Subcontract.

ARTICLE 2

PAYMENTS

2.1 (a) T&S agrees to pay to Subcontractor, for the satisfactory completion of Subcontractor's

Work, the sum of _____ Dollars ("Subcontract Sum") in monthly payments of ninety percent (90%) of the Subcontractor's Work performed in any preceding month, in accordance with estimates prepared by Subcontractor and approved by T&S, Owner, and any other party whose approval is required by the Subcontract Documents, and in accordance with the conditions set forth below. Subcontractor's partial pay requests shall be submitted on T&S forms and in accordance with the approved Schedule of Values with such additional detailed or substantiating information as may be requested by T&S. Payments made on account of materials not incorporated in Subcontractor's Work, but delivered and suitably stored at the site, or at some other bonded location agreed upon in writing, shall be in accordance with the terms and conditions of the Subcontract Documents. Subcontractor will provide monthly completed lien waivers and releases from Subcontractor, sub-subcontractors, and suppliers, in a form satisfactory to Owner and T&S amounting to one hundred percent (100%) of the partial payment that was paid to Subcontractor for the previous month. Failure to provide such forms will delay payment to Subcontractor. Payment of the approved portion of Subcontractor's monthly estimate shall be conditioned upon receipt by T&S of payment from Owner. Approval and payment of Subcontractor's monthly estimate is specifically agreed not to constitute or imply acceptance by T&S or Owner of any portion of Subcontractor's Work.

(b) Notwithstanding anything contained herein and/or contained within the Subcontract Documents to the contrary, all payments to Subcontractor shall be made by T&S solely out of funds actually received by T&S from the Owner, and receipt of payment by T&S from the Owner shall be an express CONDITION PRECEDENT to payment by T&S to Subcontractor for any and all of Subcontractor's Work. Subcontractor acknowledges that it is sharing, to the extent of payments to be made to Subcontractor, in the risk that Owner may fail to make one or more payments to T&S for all or a portion of Subcontractor's Work. If the Owner has not paid T&S, for any reason whatsoever, including, without limitation, the Owner's financial inability to pay or some other reason not related to Subcontractor, Subcontractor agrees that T&S shall not be liable for payment, nor be indebted, to Subcontractor. Subcontractor assumes the credit risk of Owner and agrees that in connection with this Subcontract, it has relied solely on Owner's credit and not that of T&S. Furthermore, Subcontractor acknowledges and agrees T&S has exercised diligence in ascertaining that i) the Owner is financially viable; ii) there are adequate financial arrangements in place to pay for the improvements included in Subcontractor's Work; and, iii) such information has been communicated in writing to Subcontractor before this Subcontract became effective. As a result, Subcontract stipulates, represents and agrees that so long as T&S makes reasonable efforts to collect any amount owed by Owner relating to Subcontractor's Work (or offers to assign such right to Subcontractor) it will never assert (and shall be estopped from asserting) in any legal proceeding or arbitration that the preceding contingent payment clause is unconscionable under Section 35.521 of the Texas Business and Commerce Code, or any other applicable law. Any surety of T&S shall be entitled to assert the same condition precedent defense and stipulation against Subcontractor.

2.2 (a) On the 25th day of each month Subcontractor shall present to T&S a statement of the Subcontractor's Work done through the **last** day of the month, which statement shall be approved by T&S. **ON THE FIRST DRAW REQUEST, SUBCONTRACTOR SHALL NOT RECEIVE MORE THAN 25% OF THE TOTAL CONTRACT AMOUNT WITHOUT FULL RELEASES FROM ALL OF ITS SUPPLIERS.**

(b) In the event Subcontractor does not submit to T&S such monthly estimates by the 25th day of each month, then T&S may, at its option, include in its monthly estimate to Owner for Subcontractor's Work performed during the preceding month, such amount as it may deem proper for the Subcontractor's Work for the preceding month and Subcontractor agrees to accept such approved portion thereof in lieu of monthly payment based upon Subcontractor's estimate.

2.3 In the event it appears to T&S that the labor, material, and other bills incurred in the performance of Subcontractor's Work are not being currently paid, T&S may take such steps as T&S deems in its sole discretion necessary to ensure that the money paid with any progress payment will be utilized to pay such bills. Failure to timely pay such expenses shall constitute an event of default with the remedies provided in Article 9 below.

2.4 Final payment shall be paid to Subcontractor upon the receipt by T&S of funds from the Owner, subject to the condition precedent set out in Article 2.1.(b), and upon acceptance and approval of Subcontractor's Work by Owner, or Owner's representative, and T&S as conforming to the requirements of the Subcontract Documents. Consent of Subcontractor's surety will be required prior to final payment. Subcontractor will be required to furnish to T&S evidence (including releases of lien when required by T&S) that payments for all labor, including fringe benefits and other payments due under collective bargaining agreements, have been made, and all subcontractors, materialmen, and suppliers have been paid for all work performed or supplies furnished on the Project and that they are waiving their lien rights and bond claims upon final payment of the agreed contract balance due.

2.5 T&S may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor, whether pursuant to this Subcontract or any other agreement, or relationship between T&S and Subcontractor. In the event of any breach by Subcontractor of any provision or obligation of this Subcontract or any other agreement with T&S, or in the event of the assertion by other parties of any claim or lien against Owner, T&S, T&S' surety, or the premises upon which Subcontractor's Work was performed, which claim or lien arises out of Subcontractor's performance of this Subcontract, T&S shall have the right, but is not required, to retain out of any payments due or to become due to Subcontractor, an amount sufficient to completely protect T&S from any and all loss, damage, or expense, including expert and legal fees and legal expenses therefrom, until the claim or lien has been adjusted by Subcontractor to the satisfaction of T&S. This paragraph shall be applicable even though Subcontractor has posted a full payment and performance bond.

2.6 T&S may withhold payments for the unpaid balance of the Subcontract Sum if there is reasonable doubt that the Subcontractor's Work will be completed on schedule and in accordance with the Subcontract Documents. T&S agrees to convey such concerns, in writing, to Subcontractor prior to withholding any funds.

2.7 All sums tentatively earned by Subcontractor by the partial or complete performance of Subcontract Work and any balance of unearned Subcontract funds shall constitute a fund for the purpose of:

- (a) first, full completion of the Subcontract Work in accordance with the Subcontract Documents;
- (b) second, payment of any backcharges or claims due T&S from Subcontractor, for any project; and
- (c) third, payment to the sub-subcontractors, laborers, material and service suppliers of Subcontractor who have valid and enforceable mechanic's lien claims or valid and enforceable bond claims (if the Project is bonded),

and such tentative earnings shall not be due or payable to Subcontractor or anyone else claiming in Subcontractor's place and stead, including, but not limited to, a trustee in bankruptcy, receiver, or assignee of Subcontractor, until and unless such Subcontract Work is fully and satisfactorily completed and such persons are fully paid and satisfied. T&S may demand written evidence of Subcontractor's capability to perform and of such payments to all such persons by Subcontractor at any time.

2.8 Any payments due Subcontractor or from Subcontractor shall be due and payable at the offices of T&S in Houston, Harris County, Texas.

ARTICLE 3 PROSECUTION OF WORK

3.1 Time is of the essence. Within ten (10) days after the execution of this Subcontract, Subcontractor shall provide T&S scheduling information, including durations, planned crew sizes, planned procurement dates, planned submission dates of required shop drawings, project data, and samples for Subcontractor's Work (including the activities of sub-subcontractors, vendors, and suppliers). T&S shall then prepare the Schedule of the Work and, as may be necessary, revise such Schedule with the cooperation of Subcontractor as Subcontractor's Work progresses. Subcontractor acknowledges that revisions may be made in such Schedule and agrees to make no claim for acceleration or delay by reason of such revisions, so long as such revisions are of the type normally experienced in work of this scope and complexity. In the event Subcontractor is unable to maintain progress in accordance with the Project Schedule by reason of events for which extensions of time are permitted in the Subcontract Documents, Subcontractor's time for completion shall be extended for a reasonable, mutually agreed upon time, provided that a time extension is given by Owner to T&S, and further provided that notification of delay is given as provided herein. This time extension shall be the sole remedy for such delays. Subcontractor shall not be entitled to recover damages from Owner, Architect, T&S or its surety for any delays if T&S is not fully compensated by Owner.

3.2 Within ten (10) days after execution of this Subcontract (or at an earlier time if required by the Subcontract Documents), Subcontractor shall furnish T&S with its list of proposed sub-subcontractors, equipment, and material suppliers, along with the description of the corresponding item of Subcontractor's Work. Subcontractor shall bind its sub-subcontractors, equipment, and material suppliers to the requirements set forth in this Subcontract, the Schedule of Work, and the Subcontract Documents. In those instances where the initially accepted supplier fails to submit shop drawings, product data, or samples which meet the specifications of the Subcontract Documents, the additional

costs (price increases and other costs due to delays in placing order) to furnish the specified equipment and/or material shall be borne solely by Subcontractor.

3.3 (a) Subcontractor shall prosecute Subcontractor's Work in a prompt and diligent manner in accordance with the Schedule of Work without hindering the Work of T&S or any other subcontractor. If work or property of others is hindered, delayed, or damaged by Subcontractor, Subcontractor shall pay for all costs and damages incurred by such other party (including T&S) and will cause all such damage to be corrected to the satisfaction of and without cost to T&S or Owner. Should any subcontractor sustain any loss through (i) any wrongful or negligent act or omission of any other subcontractor, or (ii) failure of any subcontractor to perform its contractual undertakings, the subcontractor so affected waives and shall have no claim or cause of action against T&S, the Owner, or the Property, and the Subcontractor's sole recourse shall be against the responsible subcontractor to recover any and all loss sustained. The phrase "act or omission" as used herein shall be defined to include, but shall not be limited to, any unreasonable interruption or delay caused by any such subcontractor.

(b) Subcontractor acknowledges that Owner may employ other contractors to work upon the Project site or adjacent sites and that Subcontractor will have the duty to coordinate Subcontractor's Work with that of such other contractors, their suppliers and subcontractors (hereafter collectively "Other Contractors"). Should other subcontractors or suppliers of T&S, or Other Contractors, delay, damage, or disrupt Subcontractor's Work, Subcontractor specifically waives any claim against T&S, its surety, or Owner, for any resulting damages, other than time extensions, and will look exclusively to those subcontractors, suppliers, or Other Contractors who have caused the damage for the satisfaction of its claim for any and all damages. Should Subcontractor delay the work or damage the work or equipment of other subcontractors or suppliers of T&S, or that of Other Contractors or Owner, in addition to and without waiving any other indemnity contained in this Subcontract, Subcontractor and its surety will indemnify and hold T&S and its surety harmless from any claims by any of said parties, including costs, expenses, expert and attorneys' fees incurred by T&S.

(c) If the execution and completion of Subcontractor's Work depends upon, or is sequential to work of T&S, its subcontractors and suppliers, or Other Contractors, Subcontractor shall inspect and measure such other Work as soon as the progress thereof will permit and promptly report to T&S, in writing, any discrepancies or deficiencies therein which render same unsuitable for the reception of Subcontractor's Work. Failure to so inspect or report shall constitute Subcontractor's acceptance of such other work as fit and proper for the reception of its Work, except as to latent defects in such other work, and Subcontractor shall be liable for all damages incurred as a result of any such failure to so inspect and report.

3.4 Subcontractor shall be responsible for and will prepare for performance of Subcontractor's Work, including, without limitation thereto, preparing shop drawings, taking samples and performing tests, measuring field dimensions, determining labor requirements, and ordering materials as required to meet the Schedule of Work. Subcontractor shall notify T&S when portions of Subcontractor's Work are ready for inspection.

3.5 Subcontractor shall submit a Schedule of Values to T&S for review and approval prior to submitting the first application for payment. The Schedule shall be itemized by general areas, specific large pieces of equipment, and/or a similar method which will accurately indicate the value of the Subcontractor Work performed or services rendered.

3.6 Subcontractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Subcontractor's Work. The superintendent shall be approved by T&S and shall not be changed except with the consent of T&S, unless the superintendent provided proves to be unsatisfactory to Subcontractor or T&S or ceases to be in Subcontractor's employ. The superintendent shall represent Subcontractor and all communications given to the superintendent shall be binding as if given to Subcontractor. The superintendent shall attend all coordination, scheduling, and safety meetings where Subcontractor's Work is involved and as required by T&S.

3.7 T&S shall establish control lines and benchmarks as required. Any further layout necessary for completion of the Subcontract is the responsibility of Subcontractor. Subcontractor shall lay out Subcontractor's Work from control points supplied by T&S and be responsible for its accuracy and the placement of all inserts, embedments, grounds, and blockouts or other similar items, as required to complete Subcontractor's Work. Subcontractor shall be responsible for replacement, correction, or repair of such items that are improperly placed.

3.8 Subcontractor shall be responsible for supplying its own crew with an adequate supply of drinking water, ice, and cups.

3.9 If T&S agrees to allow Subcontractor to use T&S' tools or equipment, Subcontractor shall do so at its sole risk and, in addition to any other indemnity herein, shall indemnify and hold T&S harmless from any claims and/or expenses, including any claims by any T&S personnel who are used by Subcontractor, and including, but not limited to, expert and attorneys' fees and all litigation costs, resulting from the use of such tools and equipment by Subcontractor, regardless of whether T&S operated such tools and equipment. Subcontractor agrees to maintain such equipment or tools in good working condition and perform, at Subcontractor's sole expense, any necessary repairs before returning such borrowed equipment and/or tools.

3.10 Any inspection or review by T&S of Subcontractor's Work or submittals shall not relieve Subcontractor from its obligation to perform Subcontractor's Work in accordance with the Subcontract Documents.

3.11 Subcontractor will furnish periodic progress reports of Subcontractor's Work as mutually agreed, including the progress of materials or equipment to be provided under this Subcontract that may be in the course of preparation or manufacture.

3.12 Subcontractor shall maintain at the site, one copy of all drawings, specifications, addenda, approved shop drawings, change orders, and modifications, in current order and catalogued to record all changes relating to its Work made during the Project. Subcontractor shall keep T&S informed of all

such changes by submitting to T&S a written description of the change before such change is to be made.

3.13 If the Subcontract Documents require a final set of record drawings and operating and maintenance manuals upon completion of the Project, T&S must receive these materials before Subcontractor's final payment can be processed.

3.14 Subcontractor shall cooperate with T&S and other subcontractors or Other Contractors whose work may interfere with Subcontractor's Work and shall participate in the preparation of coordinated drawings and work schedules for areas of congestion, specifically noting and advising T&S of any interference in work schedules by other subcontractors.

3.15 Subcontractor shall keep the building and premises or the site reasonably clear of debris produced by the performance of Subcontractor's Work. If Subcontractor fails to comply with this paragraph, within twenty-four (24) hours after receipt of notice of non-compliance from T&S, T&S may perform such necessary clean-up and deduct the cost from any amounts due to Subcontractor.

3.16 Subcontractor shall give adequate notice pertaining to Subcontractor's Work to proper regulatory authorities and shall secure and pay for all necessary licenses, permits, governmental fees, and inspections to carry on Subcontractor's Work and shall furnish a copy of said permits, licenses, receipts of fees paid, and inspection reports to T&S.

3.17 Subcontractor shall comply with all federal, state, and local laws, rules, regulations, and orders, including, but not limited to, social security laws, unemployment compensation laws, worker's compensation laws, and safety laws insofar as applicable to the performance of this Subcontract. It shall pay all taxes, including, but not limited to, sales and/or use taxes, relating to the performance of Subcontractor's Work as required by law and the Subcontract Documents. Subcontractor hereby represents to T&S that the Subcontract Sum includes all such taxes, unless expressly carved out herein. Subcontractor shall also maintain its own safety program for compliance with such laws which shall be as stringent, if not more so, than the program T&S currently has in place (which Subcontractor acknowledges having had the opportunity to review in detail) and Subcontractor shall not wait for or expect direction from T&S for compliance with said program, statutes, rules, regulations, and orders.

3.18 Subcontractor will not assign this Subcontract or any of the obligations called for hereunder in whole or in part to any person or entity without the prior written consent of T&S, with the exception of those sub-subcontractors listed by Subcontractor and furnished to T&S as provided for herein. Any assignment which violates the foregoing is void and unenforceable.

3.19 In the case of minor repairs to newly finished interior surfaces (not covered by property insurance), the cost of said repairs shall be allocated to the subcontractors in proportion to the manpower employed during the period when damage occurred.

3.20 Subcontractor shall carry on Subcontractor's Work and maintain its progress pending the resolution of any dispute and/or arbitration proceedings.

3.21 (a) Subcontractor represents and warrants that it is in compliance with and agrees it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including, but not limited to, the provisions of that Act prohibiting hiring and continuing to employ unauthorized aliens, requiring verification and recordkeeping with respect to identity and eligibility for employment, and prohibiting discrimination on the basis of national origin, United States citizenship, or impending citizenship status.

(b) In addition to and without waiving any other indemnity provision in this Subcontract, Subcontractor agrees to indemnify and hold T&S harmless against any expense, loss, fine, penalty, or liability of any kind incurred by T&S as a result of any failure by Subcontractor to comply with any of the provisions of the Immigration Reform and Control Act of 1986 or the regulations promulgated thereunder. This provision shall be included in any contract let by Subcontractor for any of Subcontractor's Work.

ARTICLE 4

CHANGES IN THE WORK

4.1 T&S and Subcontractor agree that T&S may add to or deduct from the amount of Subcontractor's Work, and any changes so made in the amount of work involved, or any other parts of this Subcontract, shall be by a written amendment hereto setting forth in detail the changes involved and the value thereof which shall be mutually agreed upon between T&S and Subcontractor. Subcontractor agrees to proceed with Subcontractor's Work as changed when so ordered in writing by T&S so as not to delay the progress of Subcontractor's Work, and pending any determination of the value thereof, unless T&S first requests a proposal of cost before the change is effected. If T&S requests a proposal of cost for a change, Subcontractor shall promptly comply with such request.

4.2 Subcontractor hereby expressly waives any claim for compensation for extra Work or materials or changes of any kind in Subcontractor's Work, regardless of whether the same was ordered by T&S or any of its agents or representatives, unless a written Change Order therefor has been issued by T&S. If extra Work was ordered by T&S, and Subcontractor performed same but did not receive a written Change Order, Subcontractor shall be deemed to have waived any claim for extra compensation or an extension of time, regardless of any written or verbal protests or claims by Subcontractor. Subcontractor shall be responsible for any costs incurred by T&S for changes of any kind made by Subcontractor that increase the cost of Subcontractor's Work or the Work for either T&S or other subcontractors when Subcontractor proceeds with such changes without a written order therefor.

4.3 Without waiving the requirements of paragraph 4.2, Subcontractor agrees that to the extent Subcontractor may be entitled to claim compensation or an extension of time for additional services rendered or materials furnished by Subcontractor to T&S, valid notice must be given to T&S prior to the furnishing of the services or material or, if such notice is impractical because of an emergency, written notice of the claim therefor must be given by Subcontractor to T&S not later than the last day of the calendar month following that month in which the claim originated, with the amount of the claim to be

given in writing by Subcontractor as soon as practicable or at an earlier time, if required by the Subcontract Documents. Failure to meet the foregoing requirements shall constitute a waiver by Subcontractor of any such claim and estop Subcontractor forever from recovering any additional time or compensation, or both, for such claim.

4.4 Subcontractor will make all claims for extra compensation and extensions of time to T&S promptly in accordance with this Article and consistent with the Subcontract Documents. Subcontractor agrees that the time listed in the Contract Documents within which notice must be given for a claim or any appeal is reduced by five (5) days for all notices submitted by Subcontractor. T&S agrees to pursue reasonable claims submitted by Subcontractor against Owner under the provisions of the Subcontract Documents. Subcontractor shall be responsible for preparation of the claims and for all legal and other costs incurred by T&S.

4.5 Subcontractor shall work overtime or extra shifts to overcome any delays and shall be reimbursed for overtime only if directed, in writing, by T&S for reasons other than delays caused by or to Subcontractor. Reimbursement shall be based on hours shown on daily time sheets which have been submitted to, and approved by, T&S. Only the premium portion of such approved overtime, exclusive of any markups for overhead and/or fee, shall be considered for reimbursement.

4.6 Notwithstanding any provision contained in the Subcontract to the contrary, T&S shall not be liable to Subcontractor for delay to Subcontractor's Work by the act, neglect, or default of the Owner, T&S, action of workmen or others, or any cause beyond T&S' control. In such event, Subcontractor agrees that time extensions shall be its sole remedy for any such delays and Subcontractor expressly waives all monetary claims for delay damages. However, notwithstanding the foregoing, should the Owner compensate T&S for any delay damages which are otherwise precluded by the foregoing, Subcontractor shall be entitled to its pro rata portion thereof. Actual receipt by T&S of such delay damages is a CONDITION PRECEDENT to T&S' obligation to pay Subcontractor.

ARTICLE 5

INSURANCE AND INDEMNITY

5.1 Prior to starting Subcontractor's Work, Subcontractor shall procure and maintain in force Worker's Compensation Insurance and Employer's Liability Insurance in full compliance with the laws of the state in which Subcontractor's Work under this Subcontract is performed; Commercial General Liability Insurance with contractual coverage; Automobile Liability Insurance, including owned, non-owned, and hired automobile coverage; and, such other insurance, to the extent required by the Subcontract Documents for Subcontractor's Work.

5.2 Subcontractor's Commercial General and Automobile Liability Insurance, as required by Paragraph 5.1, shall be written for limits of liability not less than the following:

- (a) Worker's Compensation and Employer's Liability
 - (1) Statutory Workmen's Compensation limits for all states in which operations are

- conducted;
- (2) Employer's Liability with a limit of \$1,000,000.00
- (b) Public Liability other than Automobile
 - (1) Form to include coverage for operations, products and/or completed operations and contractual liability specifically including the provisions of paragraph 5.7 below, including coverage for explosion, collapse of buildings, and underground damage, if applicable;
 - (2) Limits of Liability:
 - Combined Bodily Injury and Property Damage:
\$1,000,000.00 each occurrence
 - General Aggregate: \$2,000,000.00
 - Products-Completed Operations Aggregate: \$1,000,000.00
 - Personal and Advertising Injury: \$1,000,000.00
- (c) Automobile Liability
 - (1) Form to include coverage for all owned, non-owned, or hired automobiles
 - (2) Limits of Liability:
 - Combined Bodily Injury and Property Damage Liability: \$1,000,000.00
- (d) Excess Liability Insurance:
 - Policy written in the amount of \$1,000,000.00 in excess of the underlying limits of liability

5.3 Additional Insured. Contractor and Owner shall be included as insureds under the CGL policy for liability arising out of Subcontractor's work performed under this Subcontract, including products-completed operations coverage for a period of ten years following substantial completion, except to the extent of liability attributable to the negligence or fault of Contractor or Owner.

Notwithstanding the foregoing, as to liability of Contractor or Owner for bodily injury or death of an employee or agent of Subcontractor or Subcontractor's Subcontractor, the additional insurance provided by Subcontractor shall provide coverage for the negligence or fault of Contractor or Owner, including the sole negligence of Contractor or Owner.

The insurance provided by Subcontractor to Contractor and owner shall be primary and noncontributory to other insurance available to Contractor or Owner. Equivalent additional insured coverage shall also be provided by Subcontractor to Contractor and Owner on Subcontractor's umbrella liability policy on a "follow form" basis and that additional insured coverage on the umbrella policy shall be primary to any other coverage available to Contractor or Owner.

5.4 Commercial General 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.

5.5 The foregoing policies shall contain provisions that coverages afforded under the policies will be primary and non-contributory with any insurance carried by the Owner or T&S and will not be cancelled

or not renewed until at least thirty (30) days prior written notice has been given to T&S. Certificates of Insurance acceptable to T&S naming T&S as an additional insured shall be filed with T&S prior to the commencement of Subcontractor's Work.

5.6 T&S and Subcontractor waive all rights against each other and against Owner, the Architect/Engineer, separate contractors, and all other Subcontractors for damages caused by fire or other perils to the extent reimbursed by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. Subcontractor shall be solely responsible for any deductible payment due pursuant to any insurance policy covering the Work.

5.7 (A) TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS SET OUT IN SUBPARAGRAPH (B) BELOW, SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CONTRACTOR AND OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS SUBCONTRACT OR SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF THE SUBCONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENCE ACT OR OMISSION OF SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS SUBCONTRACTOR MAY BE LIABLE.

(B) NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CONTRACTOR AND OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (THE "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF SUBCONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT IN SUCH EVENT THE SUBCONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF SUBCONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. SUBCONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.

5.8 T&S and Subcontractor agree that Subcontractor's obligation to indemnify and hold harmless the indemnittees is a separate and distinct obligation of Subcontractor for which T&S and Subcontractor have specifically negotiated and bargained. As consideration for such obligation, T&S shall pay Subcontractor the additional sum of One Hundred and No/100 Dollars (\$100.00), which consideration shall be separate from and in addition to all other sums to be paid by T&S pursuant to the terms of the Subcontract. This consideration for the indemnity-hold harmless obligation of Subcontractor shall be due upon the execution of the Subcontract.

ARTICLE 6

PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

A Performance Bond and a Labor and Material Payment Bond in forms satisfactory to T&S such as those attached as Attachments G-I and G-II shall be furnished in the full amount of this Subcontract, if required by T&S. This obligation shall continue throughout the Subcontract and may be required at any time during the performance of Subcontractor's Work by a change under Article 4. T&S shall be paid by the surety any Legal Fees (defined below) T&S incurs in the enforcement of its rights under said bonds.

ARTICLE 7

WARRANTY

7.1 Subcontractor agrees to promptly make good, without cost to Owner or T&S, any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period so established in the Subcontract Documents and if no such period be stipulated in the Subcontract Documents, then such guarantees shall be for a period of one year from the date of completion and acceptance of the Project by Owner. Receipt by T&S of all guarantees or warranties stipulated by the Subcontract Documents is required prior to processing Subcontractor's final payment. This warranty shall be in addition to all other warranties and remedies, expressed or implied, under the law and the Subcontract Documents.

7.2 (a) Notwithstanding any other term or provision contained herein to the contrary, and in accordance with Tex. Civ. Prac. & Rem. Code § 16.009(e)(1), Subcontractor and T&S expressly understand, agree and accept that for the purpose of calculating the ten (10) year period in § 16.009, the Date of Substantial Completion of Subcontractor's Work shall be the same date as the Date of Substantial Completion for the Project.

(b) Subcontractor further understands, accepts and agrees that if any person or entity brings suit for damages for any claim arising out of an alleged defective or unsafe condition of the Project, or an alleged deficiency in the construction or repair of the Project, which may be covered by the indemnification agreements specified above, and if a court of competent jurisdiction determines that the Date of Substantial Completion of Subcontractor's Work is not the same date as the Date of

Substantial Completion of the Project, in spite of the parties' agreement in (a) above, Subcontractor hereby waives and relinquishes any right it may have to assert a defense based upon Subcontractor's Date of Substantial Completion being different than the Date of Substantial Completion for the entire Project, against any action brought by T&S against Subcontractor to enforce the terms and provisions of the indemnification agreements contained in the Subcontract.

ARTICLE 8

CONTRACTOR'S OBLIGATIONS

8.1 T&S agrees to be bound to Subcontractor as set forth in Article 1.2(b) above.

8.2 Upon request, T&S will give Subcontractor written authorization to obtain directly from the Architect/Engineer or Owner's authorized agent, evidence of the amount and percentage of completion certified on its account.

8.3 T&S shall make no demand for liquidated damages in any sum in excess of the amount specifically named in this Subcontract or the Contract Documents. Liquidated damages shall not be assessed for delays not caused by Subcontractor. Liquidated damages, when assessed, shall not exceed Subcontractor's proportionate share of the responsibility for such delay. This provision does not preclude any claim T&S may have for direct damages under law.

8.4 Subcontractor will furnish those temporary facilities and services required by Subcontractor, except for those in writing to be provided by T&S. Adequate storage areas, if available, will be allocated by T&S for Subcontractor's materials and equipment during the course of Subcontractor's Work. Locations for parking, office trailer(s), marshaling yard(s), etc., shall be submitted to and approved by T&S.

ARTICLE 9

DEFAULT AND TERMINATION

9.1 Should, in T&S' sole opinion, Subcontractor at any time fail to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality, or fail in any respect to prosecute Subcontractor's Work with promptness and diligence, or fail to promptly correct defective work or fail in the performance of any of the agreements herein contained, after giving twenty-four (24) hours notice to Subcontractor, T&S may, at its option, and without prejudice to any other remedy T&S may have, provide such labor, materials, and equipment, and deduct the cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to Subcontractor under this Subcontract (such deduction sometimes referred to as a "backcharge").

9.2 To remedy deficiencies of Subcontractor, T&S, without prejudice to any other remedy T&S may have, shall be entitled to take over or to cause others to take over any of Subcontractor's Work

being performed or to be performed under this Subcontract, or any part thereof, together with any tools and equipment, and any appliances, materials, and supplies specifically ordered or fabricated for the Project, whether at the jobsite or elsewhere, and to complete Subcontractor's Work for the account of Subcontractor by whatever method T&S deems reasonable, practical, and expedient. In this regard, Subcontractor acknowledges and agrees that it is reasonable to employ a reputable substitute subcontractor upon a cost-plus or time and material basis to complete partially performed construction work. In such event, no further payments to Subcontractor shall be made until said work is completed and accepted and paid for by Owner. Then, if the unpaid balance of the Subcontract Sum exceeds the Entire Cost (defined below) of completing said work, such excess shall be paid to Subcontractor. However, if the Entire Cost exceeds the unpaid Subcontract Sum, Subcontractor shall immediately pay the amount of such difference to T&S.

9.3 Any attempt by Subcontractor to cure any such claimed default during the notice period must be bona fide and effective to correct or substantially assure correction of the default in order to merit rescission of the notice of default.

9.4 Whenever the term "Entire Cost" is used in connection with the work performed and materials, labor, services and all items furnished by T&S or others for the account of Subcontractor, including, without limitation, all sums paid and obligations incurred to complete the Subcontractor's Work on the Project, and furnished by others, including, but not limited to, reasonable overhead and profit, and all attorneys' fees and costs, as well as all litigation expenses including, without limitation, expert and attorneys' fees, court costs, and any other expense of any nature incurred in connection with or incidental to completing the Subcontractor's Work.

9.5 If in T&S's sole opinion Subcontractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, or materials or equipment of the proper quality and quantity, or fail in any respect to prosecute Subcontractor's Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the Work of T&S or other subcontractors, or fail in the performance of any of the covenants herein contained, or be unable to meet its debts as they mature, T&S, at its option and without prejudice to any other remedy T&S may have, may at any time after serving written notice of such default with direction to cure in a specific period, but not less than two (2) working days, and Subcontractor's failure to cure the default, terminate Subcontractor's employment by delivering written notice of termination to Subcontractor. Thereafter, T&S may take possession of the Subcontractor's Work, materials, tools, appliances, and equipment of Subcontractor at the Project site, and through itself or others provide labor, equipment, and materials to prosecute Subcontractor's Work on such terms and conditions as shall be deemed necessary and shall deduct the Entire Cost from any money then due or thereafter to become due to Subcontractor under this Subcontract.

9.6 If T&S so terminates the employment of Subcontractor, Subcontractor shall not be entitled to any further payments under this Subcontract until Subcontractor's Work has been completed and accepted by Owner, and payment has been received by T&S from Owner with respect thereto. In the event that the unpaid balance due Subcontractor exceeds the Entire Cost, the difference shall be paid to Subcontractor, but if such expense exceeds the balance due, Subcontractor agrees to promptly pay the difference to T&S.

9.7 If T&S' contract with Owner is terminated for any reason including, without limitation, convenience if so allowed in the Prime Contract, T&S may immediately terminate this Subcontract. Subcontractor shall be paid for the reasonable value of Subcontractor's Work in place at the date of any such termination by T&S, upon T&S' receipt from Owner of payment for such reasonable value in an amount not to exceed the Subcontract Sum.

9.8 (a) In addition to and without waiving any other provision in the Subcontract, T&S may, without cause, order the Subcontractor in writing to suspend, delay, or interrupt Subcontractor's Work in whole in or in part for such period of time as T&S may determine. In the event of suspension ordered by T&S, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

(b) Solely in the event of (a) above, an adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- (1) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; and
- (2) that an equitable adjustment is made or denied under another provision of this Subcontract.

ARTICLE 10 MISCELLANEOUS

10.1 This Subcontract shall be governed by the laws of the state of Texas. Subcontractor hereby agrees that payment under this Subcontract shall be made in Harris County, Texas, that requested Change Orders and modifications to this Subcontract shall be delivered to T&S in Harris County, Texas and approved by T&S in Harris County, Texas, that all required notifications shall be delivered to T&S in Harris County, Texas, and that venue for all suits involving this Subcontract and/or any amendments, Change Orders, or other changes thereto shall be mandatory and exclusive in Harris County, Texas. The parties further agree that Harris County, Texas is the particular place of performance for venue purposes in accordance with Sections 15.035 and 15.092 of the Texas Civil Practice & Remedies Code, and Subcontractor waives venue in any other location, whether mandatory or permissive.

10.2 Subcontractor shall employ only such labor in the performance of Subcontractor's Work as will work harmoniously with the other. Subcontractor shall not cause, in whole or in part, any work stoppages or strikes on the Project. If Subcontractor causes, in whole or in part, any work stoppages or strikes on the Project, Subcontractor shall promptly take whatever steps are legally available to terminate the work stoppage or strike.

10.3 Failure by T&S in any instance to insist upon observance or performance by Subcontractor of

any terms, conditions, or provisions of this Subcontract shall not be deemed a waiver by T&S of any such terms, conditions, or provisions, and observance or performance thereof; no waiver shall be binding upon T&S unless the same is in writing and signed by T&S and shall then be for the particular instance referred to in said writing only; waiver of any particular breach shall not be deemed a waiver of any other breach; payment of any sum by T&S to Subcontractor with knowledge of any breach shall not be deemed to be a waiver of such breach or any other breach.

10.4 Any notice, request, or communication under this Subcontract shall be in writing and shall be delivered in person or sent by fax, email or certified mail, postage prepaid, return receipt requested, addressed to the applicable party at such address as set out above such party's signature hereto. All such notices, requests, or other communications, if made by T&S to Subcontractor, shall be deemed to have been sufficiently given for all purposes herein, on the earlier of the day it is received or on the date of mailing thereof. If such notice, request, or communication is made by Subcontractor, such notice shall be effective only when actually received by T&S.

10.5 Subject to other provisions hereof, this Subcontract shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither this Subcontract nor any of the obligations called for hereunder may be assigned in whole or in part to any person or entity without the written approval of T&S. Any assignment which violates the foregoing is void and unenforceable.

10.6 This Subcontract embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior and contemporaneous agreements, understandings, representations, and statements (oral and written) are merged into this Subcontract. The Subcontract supersedes prior negotiations, representations or agreements, either written or oral. No prior written or contemporaneous oral promises or representations which are not expressly set forth in this Subcontract shall be binding. Neither this Subcontract nor any provision hereof may be waived, modified, amended, discharged, or terminated except as provided for herein, or by an instrument in writing signed by the party against whom the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and only to the extent set forth in such instrument.

10.7 If any provision of this Subcontract is held to be illegal, invalid, or unenforceable under the present or future laws, (i) such provision shall be fully severable; (ii) this Subcontract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Subcontract; and (iii) the remaining provisions of this Subcontract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Subcontract.

10.8 In the event T&S places this Subcontract in the hands of an attorney to (1) enforce or defend any provision hereof, or (2) collect any sums due to T&S by Subcontractor or its surety, T&S shall be additionally entitled to recover from Subcontractor or its surety, or both, all attorneys' fees and costs, as well as all litigation expenses including, without limitation, expert and attorneys' fees, court costs, copy costs, and any other expense of any nature (collectively, "Legal Fees") of either (i) fifteen percent (15%) of the outstanding unpaid balance, inclusive of interest, or (ii) actual Legal Fees incurred (and estimated to be incurred until the matter is concluded), whichever is greater.

10.9 All pronouns herein, whether masculine, neuter, singular, or plural shall be deemed to indicate the appropriate gender and number.

10.10 Subcontractor waives any and all claims against T&S for incidental or consequential damages arising out of or relating to this Subcontract, including, without limitation, any consequential damages due to T&S' termination in accordance with Articles 9.5, 9.7 and/or 9.8.

10.11 T&S is an equal employment opportunity employer. Unless exempt, Subcontractor shall comply with the Equal Employment Opportunities of the Civil Rights Act of 1964 (as amended), Executive Orders 11246 and 11375 (as amended), Age Discrimination in Employment Act of 1967, Rehabilitation Act of 1973, and the Vietnam Era Readjustment Act of 1974, and with all other governmental laws, orders, and regulations relating to wages and hours of labor and other matters which may apply to Subcontractor in connection with its execution of this Agreement.

10.12 Subcontractor's surety shall be responsible for the payment of all costs, losses, or damages incurred by T&S as a result of Subcontractor's failure to comply with any provision of this Subcontract as a part of said surety's payment or performance bond undertakings, except for the insurance and indemnification coverages supplied by other insurers under the provisions of Article 5.

10.13 Subcontractor and its surety understand and agree that the limitation of the liability of T&S and its surety to pay Subcontractor solely after receipt of payments of monies from the Owner, applies to progress payments, final payments, and payments of any nature whatsoever otherwise due.

10.14 Notwithstanding any provision to the contrary contained in the Contract Documents, Subcontractor expressly agrees that this Subcontract does not contain a provision for the mandatory arbitration of disputes, nor does it incorporate by reference such a provision if such is contained in the contract between T&S and the Owner.

10.15 Notwithstanding Section 10.14, should T&S elect or be compelled to enter into arbitration with the Owner or others regarding matters relating to this Subcontract, Subcontractor agrees to consolidation of any claim of Subcontractor relating to this Subcontract with T&S' arbitration with the Owner or others, and Subcontractor agrees to be bound by the result of such arbitration.

10.16 This Subcontract may be created in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

10.17 This Subcontract shall conclusively be deemed to have been jointly prepared by all parties hereto, and any uncertainty or ambiguity in it shall not be interpreted against any of the parties, but according to the application of the rules of interpretation of contracts.

10.18 The parties hereto acknowledge that they have the right to consult with legal counsel concerning the contents of this Subcontract and the rights and obligations created thereby. By executing this Subcontract, each party acknowledges that it has consulted with legal counsel of its own choosing to

the extent each party deemed advisable.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract effective the date and year first above written, which, along with the Subcontract Documents represent the entire and integrated agreement between the parties hereto, supersedes all prior negotiations, representations, or agreements, oral or written, and may only be amended or modified as defined in Article 4 or otherwise as required by this Subcontract. Each of the undersigned authorized representatives of the parties expressly warrants and represents and does hereby state and represent to the other party that no promise or agreement which is not herein expressed has been made to him in executing this Subcontract and that neither party is relying upon any statement or representation of any agent or representative of the other party which is not expressly contained herein.

"T&S":

TRIBBLE & STEPHENS CONSTRUCTION, LTD.

**By: TS Martin Holdings, LLC
a Texas Limited Liability Company
d/b/a Tribble & Stephens Construction, Ltd.**

By: _____

Name: Gary R. Kelley

Title: President

Fax: 713-973-7107

Email: gkelley@tribblestephens.com

"SUBCONTRACTOR":

Address:

Witness

Date

By: _____

(Name)

(Title)

SUBCONTRACT ATTACHMENT "A"

The following articles and stipulations are hereby made a part of **Subcontract No.**
between **TRIBBLE & STEPHENS CONSTRUCTION, LTD.** and
for the Work performed on _____ project:

1. WORK CANNOT BE PERFORMED BY SUBCONTRACTOR'S FORCES ON THE PROJECT UNTIL THE FOLLOWING DOCUMENTS ARE RETURNED, FULLY EXECUTED TO TRIBBLE & STEPHENS CONSTRUCTION, LTD.:
 - A. One (1) Subcontract Agreement "*Electronically*"
 - B. Certificate of Insurance (re: Article of the Subcontract and Insurance requirements)
 - C. Performance and Payment Bonds, if applicable. (re: Article 6 of the Subcontract)
2. Subcontractor shall submit to Tribble & Stephens Construction, Ltd., on company letterhead and executed by a company officer, a Schedule of Values for Work to be performed.
3. Applications for payments must be made on forms provided Subcontractor in the Subcontract package by Tribble & Stephens Construction, Ltd. *The Schedule of Values, page two of the application form, MUST be filled out completely and correctly each month with dollar amounts corresponding to the Schedule of Values approved in Item 2 above. In addition, at Tribble & Stephens' sole discretion, the attached Second Tier Subcontractor/Supplier Form will be required to be completed and submitted with each application for payment.* NO PAYMENT WILL BE MADE ON REQUESTS USING FORMS OTHER THAN THOSE PROVIDED BY TRIBBLE & STEPHENS CONSTRUCTION, LTD. Payment terms are further defined in Subcontract Agreement, Article 2. FINAL RETAINAGE MUST BE BILLED SEPARATELY FROM THE LAST MONTHLY DRAW REQUEST USING THE SAME FORM.
4. Subcontractor shall utilize lien waiver forms provided Subcontractor in the Subcontract package by Tribble & Stephens Construction, Ltd. All releases MUST be executed by an officer of the company. These are detailed as follows:
 - A. ATTACHMENT D "IA" – CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT; this form shall be executed and submitted with monthly progress billing.
 - B. ATTACHMENT D "IB" – UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT; this form shall be executed by Subcontractor in exchange for monthly progress payments.
 - C. ATTACHMENT D "IC" – CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT; this form shall be executed and submitted with final retainage billing.
 - D. ATTACHMENT D "ID" – UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT; this form shall be executed by Subcontractor in exchange for final retainage payment.

5. Delivery of materials, equipment, etc. required for Subcontractor's work must be scheduled with the enclosed tentative project schedule. Final confirmation of delivery dates shall be made through the Project Superintendent. In the event there is a potential delay in the project due to untimely delivery and/or shortage of Subcontractor's materials, etc., Subcontractor agrees to give written notice to Tribble & Stephens Construction, Ltd. within two (2) days after notification of such potential delay.
6. No Work of any kind including movement of equipment, materials or men onto the jobsite shall begin without specific permission by the Project Superintendent. All scheduling of Work shall be coordinated with the Project Superintendent located at the jobsite.
7. Submittals (5 copies) and shop drawings (1 sepia and 4 bluelines) shall be submitted to Tribble & Stephens Construction, Ltd. to the attention of the Project Manager. All shop drawings required shall be submitted on or before _____ to the following email address in accordance with the contract documents.

TRIBBLE & STEPHENS CONSTRUCTION, LTD.

8588 Katy Freeway, Suite 100

Houston, TX 77024

(713) 465-8550 (phone)

(713) 973-7107 (fax)

Via email: _____

8. Prior to commencing Work, Subcontractor is required to furnish to Tribble & Stephens Construction, Ltd. Superintendent any and all Material Safety Data Sheets (MSDS) pertinent to the project in accordance with the Hazardous Communication Standard – Parts 1910, 1915, 1917, 1918, 1926 and 1928.
- 9.

**ACKNOWLEDGEMENT OF RECEIPT OF TRIBBLE & STEPHENS
CONSTRUCTION, LTD. CORPORATE QUALITY MANAGEMENT MANUAL**

This is to acknowledge that Subcontractor has received a copy of the Tribble & Stephens Construction, Ltd. (T&S) "Corporate Quality Management Manual". Subcontractor understands it contains important information on T&S's Quality Management policies, procedures, rules and regulations and it is the Subcontractor's responsibility to familiarize themselves with the material in the manual and that their business conduct will be governed by its contents.

A copy of the manual was sent via email as a separate attachment to our Subcontract & Indemnity Agreement. It is also available on T&S's Procore website.

Subcontractor further understands that T&S reserves the right to modify, revoke, suspend, terminate or change any and all such rules, regulations, plans, policies, procedures, in whole or in part, at any time, with or without notice.

Within the next 10 business days, Subcontractor agrees to forward a copy of its Site Specific Quality Control Plan (SSQCP), appropriate for its Work on this project to the attention of Laura Collins (lcollins@tribblestephens.com). This plan will become part of the Subcontract Agreement.

- | | |
|-----------------|------|
| Project Manager | Cell |
| Superintendent | Cell |
| Superintendent | Cell |

- | (SPECIFICATION SECTION) | (DESCRIPTION TITLE) |
|---|---------------------|
| See Attachment B – Listing of Documents | |

- ### A. SCOPE:

[illegible]



Notwithstanding anything to the contrary in this Contract Agreement, Subcontractor will provide all materials, equipment, labor and tax required by the contract documents.

- B. This subcontractor will be required to provide with each payment application all Second Tier Subcontractors' and Suppliers' contact information and payment history as well as releases. At Tribble & Stephens' sole option joint checks will be issued for any vendor.
 - C. Participation in T&S SubGuard program including submission of all required forms is required by this Contract Agreement.
 - D. No music radios allowed on jobsite.
 - E. Subcontractor to perform all necessary engineering required for his own Work.
 - F. All Work to be scheduled and coordinated with the Project Superintendent. All material deliveries, storage trailers, etc., shall be approved in advance by the Project Superintendent.
 - G. Subcontractor shall have an employee representative present during scheduled coordination meetings and safety meetings as requested by the Project Superintendent.
 - H. Provide general clean up manpower proportional to manpower on project. Subcontractor to remove all trash/rubbish created as a result of this scope to central dumpster. All boxes, crates etc. to be broken down to minimal size.
 - I. All _____ work to proceed in an orderly manner and in accordance with the job schedule and as directed by the Project Superintendent.
 - J. Any Subcontractor performing design/build work shall have professional liability insurance with minimum limits of \$1,000,000 per claim. Tribble & Stephens Construction, Ltd. will not be listed as an additional insured and will not require a waiver of subrogation.
15. All of the above including permits, scaffolding, fasteners and miscellaneous items required for a complete installation in accordance with all local and state codes. Trash and debris generated by your Work to be removed daily from the site, or as directed by the Project Superintendent.
16. Exclusions:

17. In the event of a conflict among the Contract Documents, the provisions of this agreement shall be controlling. In the event any drawings or specifications are not specific, the better quality and/or greater quantity of Work or material shall be taken to be that specified under the Contract Documents.
18. By execution of this Subcontract, the Subcontractor is aware of the construction schedule and has included all labor, materials, equipment and overtime required to meet completion dates established by Tribble & Stephens Construction, Ltd. You are also aware that during the construction process, some of the start and completion dates of various activities of Work may change. This does not relieve the Subcontractor from his contractual responsibility to schedule and complete his Work in accordance with Tribble & Stephens Construction, Ltd. direction.
19. Subcontractor shall coordinate his Work with all other crafts to avoid conflict.
20. Subcontractor understands that Tribble & Stephens Construction, Ltd. has selected Subcontractor, in part, because of its representations of experience in, familiarity with, and understanding of environmental laws, regulations and procedures applicable to large construction projects. Subcontractor does hereby warrant and represent to Tribble & Stephens Construction, Ltd. that it is fully aware of and familiar with all federal, state and local environmental laws relative and applicable to the activities to be performed by Subcontractor under the terms of this Agreement.
21. Subcontractor is informed and aware that strict compliance with federal, state and local storm water discharge regulations, permits and requirements ("Storm Water Requirements"), as well as wetlands protection laws and requirements, is required of the Subcontractor by Tribble & Stephens Construction, Ltd. as a material condition of this Agreement. Subcontractor does hereby agree, warrant and represent that it will, at all time during the performance of this agreement, strictly comply with all applicable environmental protection requirements. Subcontractor shall also include requirements for such compliance in all second tier subcontracts on the project that is the subject of this Agreement.
22. In the event that during the performance of work by Subcontractor under this Agreement, Tribble & Stephens Construction, Ltd. determines (in its sole judgment and discretion) that Subcontractor or a sub-subcontractor is not complying with the requirements of the Agreement, or any part thereof Tribble & Stephens Construction, Ltd. may require the Subcontractor to stop work until such noncompliance is remedied and corrected. In such event, any delay in completion of this project that may be penalized under any other provisions of the Agreement shall be charged to the Subcontractor, in addition to any damages resulting to Tribble & Stephens Construction, Ltd. arising from such delay, or from any violations of Storm Water Requirements pursuant to these provisions.
23. Subcontractor is informed and aware that Tribble & Stephens Construction, Ltd. may be subjected to fines, penalties, costs, attorneys' and consultants' fees, increased construction

costs, delay expenses, loss of profits, and other losses (whether direct or indirect) or claims by third parties (all of the foregoing referred to herein as "Claims and Losses") as a result of the violations by Subcontractor of any Storm Water Requirements, wetland protection laws, at the site covered by this Agreement or at any other Tribble & Stephens Construction, Ltd. sites at which Subcontractor may be working. In addition to any other provisions of like nature herein, Subcontractor, its agents, employees or sub-subcontractors, where so ever committed, arising out of or that may affect the construction of the _____ that is the subject of this Agreement.

24. The original Subcontract amount is _____

AGREED,

TS MARTIN HOLDINGS, LLC

d/b/a Tribble & Stephens Construction, Ltd.

By: _____
Name: _____
Title: _____

By: _____
Name: Gary R. Kelley
Title: President

Drawing Sets

DRAWING	DRAWING NAME	Contract Documents	Column1
	BUILDING 5		
	ARCHITECTURAL		
A2-5-000	COVER SHEET	12/2/2016	ISSUE FOR PERMIT
A2-5-001	SHEET INDEX, ABBREVIATIONS, LEGEND	4/6/2017	ASI#006
A2-5-002	PARTITION TYPES	2/3/2017	ADD#01
A2-5-100	LOT 2 SITE PLAN	2/3/2017	ADD#01
A2-5-101	ENLARGED SITE PLAN	2/14/2017	PRECON RFI#005
A2-5-102	DOCK AND SITE DETAILS	3/17/2017	ASI#005
A2-5-103	DOCK AND DUMPSTER ENCLOSURE DETAILS	3/17/2017	ASI#005
A2-5-104	SITE RAMPS, STAIRS AND DETAILS	2/3/2017	ADD#01
A2-5-105	SITE RAMP DETAILS	12/2/2016	ISSUE FOR PERMIT
A2-5-200	BLDG 5 OVERALL FLOOR PLAN	3/17/2017	ASI#005
A2-5-201	BLDG 5A FLOOR PLAN	3/17/2017	ASI#005
A2-5-202	BLDG 5B FLOOR PLAN	3/17/2017	ASI#005
A2-5-203	BLDG 5C FLOOR PLAN	3/17/2017	ASI#005
A2-5-210	SOFFIT AND CEILING PLANS	2/10/2017	ADD#02
A2-5-211	BLDG 5A ROOF PLAN	3/17/2017	ASI#005
A2-5-212	BLDG 5B ROOF PLAN	3/17/2017	ASI#005
A2-5-213	BLDG 5C ROOF PLAN	3/17/2017	ASI#005
A2-5-214	ROOF DETAILS	3/17/2017	ASI#005
A2-5-301	BLDG 5 ELEVATIONS	4/6/2017	ASI#006
A2-5-302	BLDG 5 ELEVATIONS	4/6/2017	ASI#006
A2-5-303	BLDG 5 ELEVATIONS	4/6/2017	ASI#006
A2-5-401	BLDG 5A WALL SECTIONS	3/17/2017	ASI#005
A2-5-402	BLDG 5A WALL SECTIONS	3/17/2017	ASI#005
A2-5-403	BLDG 5A WALL SECTIONS	12/2/2016	ISSUE FOR PERMIT
A2-5-404	BLDG 5B WALL SECTIONS	2/3/2017	ADD#01
A2-5-405	BLDG 5B WALL SECTIONS	2/3/2017	ADD#01
A2-5-406	BLDG 5B WALL SECTIONS	12/2/2016	ISSUE FOR PERMIT
A2-5-407	BLDG 5C WALL SECTIONS	3/17/2017	ASI#005
A2-5-408	BLDG 5C WALL SECTIONS	3/17/2017	ASI#005
A2-5-409	BLDG 5C WALL SECTIONS	12/2/2016	ISSUE FOR PERMIT
A2-5-410	BLDG 5C WALL SECTIONS	12/2/2016	ISSUE FOR PERMIT
A2-5-411	BLDG 5C WALL SECTIONS	12/2/2016	ISSUE FOR PERMIT
A2-5-500	ENLARGED PLAN DETAILS	12/2/2016	ISSUE FOR PERMIT
A2-5-501	ENLARGED PLAN DETAILS	2/10/2017	ADD#02
A2-5-502	ENLARGED PLAN DETAILS	2/10/2017	ADD#02
A2-5-503	ENLARGED PLAN DETAILS	12/2/2016	ISSUE FOR PERMIT
A2-5-504	ENLARGED PLAN DETAILS	12/2/2016	ISSUE FOR PERMIT
A2-5-505	ENLARGED PLAN DETAILS	2/3/2017	ADD#01
A2-5-510	SECTION DETAILS	3/17/2017	ASI#005
A2-5-511	SECTION DETAILS	3/17/2017	ASI#005
A2-5-600	DOOR SCHEDULE	3/17/2017	ASI#005
A2-5-601	VESTIBULE PLANS AND ELEVATIONS	4/6/2017	ASI#006
A2-5-602	VESTIBULE PLANS AND ELEVATIONS	4/6/2017	ASI#006

Attachment 'B'

DRAWING	DRAWING NAME	Contract Documents	Column1
A2-5-700	STAIR DETAILS	3/17/2017	ASI#005
A2-5-800	BLDG 5 - FINISH MOCK UP PANEL	2/10/2017	ADD#02
	STRUCTURAL		
S2-5-100	GENERAL NOTES	3/17/2017	ASI#005
S2-5-200	FOUNDATION PLAN - OVERALL	12/2/2016	ISSUE FOR PERMIT
S2-5-201	FOUNDATION PLAN - 5A	4/6/2017	ASI#006
S2-5-202	FOUNDATION PLAN - 5B	3/17/2017	ASI#005
S2-5-203	FOUNDATION PLAN - 5C	4/6/2017	ASI#006
S2-5-210	CANOPY PLANS	4/6/2017	ASI#006
S2-5-220	ROOF FRAMING PLAN - OVERALL	3/17/2017	ASI#005
S2-5-221	ROOF FRAMING PLAN - 5A	4/6/2017	ASI#006
S2-5-222	ROOF FRAMING PLAN - 5B	2/3/2017	ADD#01
S2-5-223	ROOF FRAMING PLAN - 5C	4/6/2017	ASI#006
S2-5-301	FOUNDATION DETAILS	12/2/2016	ISSUE FOR PERMIT
S2-5-302	FOUNDATION DETAILS	12/2/2016	ISSUE FOR PERMIT
S2-5-303	CONCRETE TILT-WALL FOUNDATION DETAILS	2/3/2017	ADD#01
S2-5-304	FOUNDATION DETAILS	3/17/2017	ASI#005
S2-5-401	CONCRETE TILT-WALL DETAILS	2/3/2017	ADD#01
S2-5-402	CONCRETE TILT-WALL DETAILS	12/2/2016	ISSUE FOR PERMIT
S2-5-501	STEEL FRAMING DETAILS	12/2/2016	ISSUE FOR PERMIT
S2-5-502	STEEL FRAMING DETAILS	2/3/2017	ADD#01
S2-5-503	STEEL FRAMING DETAILS	12/2/2016	ISSUE FOR PERMIT
S2-5-504	STEEL FRAMING DETAILS	2/3/2017	ADD#01
S2-5-601	PANEL ELEVATIONS	2/3/2017	ADD#01
S2-5-602	PANEL ELEVATIONS	2/3/2017	ADD#01
S2-5-603	PANEL ELEVATIONS	2/3/2017	ADD#01
S2-5-604	PANEL ELEVATIONS	2/3/2017	ADD#01
S2-5-605	PANEL ELEVATIONS	2/3/2017	ADD#01
S2-5-606	PANEL ELEVATIONS	2/3/2017	ADD#01
S2-5-630	PANEL ELEVATIONS	12/2/2016	ISSUE FOR PERMIT
S2-5-701	BRACING ELEVATIONS & DETAILS	12/2/2016	ISSUE FOR PERMIT
	PLUMBING		
P2-5-201	BLDG 5 PLUMBING FLOOR PLAN (1 OF 3)	4/6/2017	ASI#006
P2-5-202	BLDG 5 PLUMBING FLOOR PLAN (2 OF 3)	12/2/2016	ISSUE FOR PERMIT
P2-5-203	BLDG 5 PLUMBING FLOOR PLAN (3 OF 3)	12/2/2016	ISSUE FOR PERMIT
P2-5-301	BLDG 5 PLUMBING SCHEDULES, NOTES & DETAILS	12/2/2016	ISSUE FOR PERMIT
	ELECTRICAL		
E2-5-201	BLDG 5A ELECTRICAL FLOOR PLAN (1 OF 3)	3/17/2017	ASI#005
E2-5-202	BLDG 5B ELECTRICAL FLOOR PLAN (2 OF 3)	3/17/2017	ASI#005
E2-5-203	BLDG 5C ELECTRICAL FLOOR PLAN (3 OF 3)	3/17/2017	ASI#005
E2-5-301	BLDG 5 ELECTRICAL SCHEDULES AND ONE-LINE	2/8/2017	PRECON RFI#001
E2-5-401	BLDG 5 ELECTRICAL DETAILS	3/17/2017	ASI#005
FP1.0	FIRE PROTECTION SPECIFICATIONS AND DETAILS	2/10/2017	ADD#02
FP2.0	OVERALL FIRE SPRINKLER PIPING PLAN	2/10/2017	ADD#02
FP3.0	FIRE SPRINKLER DETAILS	2/10/2017	ADD#02
	BUILDING 5 SPECIFICATIONS		
	BOUCHER DESIGN GROUP		
	PROJECT MANUAL - BUILDING 5 DTD 12.2.2016	12/2/2016	
00010	Table of Contents	2/3/2017	
00020	PROJECT DIRECTORY	12/2/2016	
00320	GEOTECHNICAL DATA	12/2/2016	
00700	Contract Conditions	12/2/2016	
01100	Summary 2	12/2/2016	
01250	Contract Modification Procedures	12/2/2016	
01290	Payment Procedures	12/2/2016	
01310	Project Management and Coordination	12/2/2016	
01320	Construction Progress Documentation	12/2/2016	
01330	Submittal Procedures	12/2/2016	

ATTACHMENT "C"



CERTIFICATE OF LIABILITY INSURANCE

 DATE(MM/DD/YYYY)
03/04/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER AGENT'S NAME AND ADDRESS AND PHONE NUMBER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED INSURED'S NAME AND ADDRESS	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: FOR THOSE CARRIERS WHOM ARE PROVIDING COVERAGE	
	INSURER B:	
	INSURER C:	
	INSURER D:	
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 8P4QLD7X

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY			POLICY NUMBER	INCEPTION	EXPIRATION	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
	<input checked="" type="checkbox"/> CONTRACTUAL INCL.						MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> XCU & PROD/COMP OPS						PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY			POLICY NUMBER	INCEPTION	EXPIRATION	
	<input checked="" type="checkbox"/> ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per person) \$
	<input type="checkbox"/> SCHEDULE D AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						\$
	<input checked="" type="checkbox"/> UMBRELLA LIAB			POLICY NUMBER	INCEPTION	EXPIRATION	
	<input checked="" type="checkbox"/> EXCESS LIAB						EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						AGGREGATE \$ 1,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			POLICY NUMBER	INCEPTION	EXPIRATION	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
							\$
							\$
							\$
							\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

REFERENCE: JOB # AND JOB NAME

SEE ATTACHED FOR VERBIAGE

CERTIFICATE HOLDER

CANCELLATION

 Tribble & Stephens Construction, Ltd.
580 Westlake Park Blvd Suite 1500
Houston, Texas 77079

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ATTACHMENT "C"

Page 3 of 4

VERBIAGE FOR SUBCONTRACTOR INSURANCE

RE:

WAIVER OF SUBROGATION IS ADDED TO ALL APPLICABLE POLICIES, IN FAVOR OF **TRIBBLE & STEPHENS CONSTRUCTION, LTD.**,

ALL APPLICABLE POLICIES, EXCEPT WORKERS COMPENSATION, INCLUDE **TRIBBLE & STEPHENS CONSTRUCTION, LTD.**,

AS ADDITIONAL INSURED. THESE COVERAGES ARE PRIMARY AND NON-CONTRIBUTORY TO THOSE PROVIDED BY OWNER AND/OR CONTRACTOR.

PROFESSIONAL LIABILITY

IF TRIBBLE & STEPHENS CONSTRUCTION, LTD. REQUIRES PROFESSIONAL LIABILITY COVERAGE, TRIBBLE & STEPHENS CONSTRUCTION, LTD. WILL NOT BE LISTED AS AN ADDITIONAL INSURED AND WILL NOT REQUIRE A WAIVER OF SUBROGATION ON THE PROFESSIONAL LIABILITY POLICY.

CANCELLATION NOTICE

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED ON PAGE 1, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

ALL ENDORSEMENTS MUST BE PROVIDED/INCLUDED

AUTHORIZED INSURANCE REPRESENTATIVE

ATTACHMENT "C"

Page 4 of 4

All Subcontractors must inform Tribble & Stephens Construction, Ltd. if any of its employees are leased or if the Subcontractor is a co-employer. The Subcontractor must disclose the name, address and insurance policy of the employee leasing company before the contract is signed. Tribble & Stephens Construction, Ltd. must review the insurance coverage or any required documentation for appropriate bonding prior to signing a contract. All leased employees are required to provide Certificates of Insurance that include an Alternate Employer Endorsement and Worker's Compensation Insurance Coverage for the Applicable State they are performing work for Tribble & Stephens Construction, Ltd.

All Subcontractors who are subcontracting a portion of their work to another company must have Tribble & Stephens Construction, Ltd. named as an "Additional Insured" on all applicable policies except Workers' Compensation along with a Waiver of Subrogation on all applicable policies in favor of Tribble & Stephens Construction, Ltd. A Certificate of Insurance must be forwarded to Tribble & Stephens Construction, Ltd. with the above referenced language.

If anyone working for your company is issued a 1099, Tribble & Stephens Construction, Ltd. MUST be informed before this contract is signed.

ALL ENDORSEMENTS MUST BE PROVIDED/INCLUDED

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT
(To be submitted with Monthly Progress Billing)

Project:

Job No:

On receipt by the signer of this document of a check from Tribble & Stephens Construction, Ltd. (maker of check) in the sum of \$_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent:
(job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Tribble & Stephens Construction, Ltd. (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____ (Company Name)

By _____ (Signature) _____ (Printed Name & Title)

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she is the _____ of _____, and that he/she executed this instrument on behalf of said corporation as its act and deed, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 20____.

“S E A L”

NOTARY PUBLIC, STATE OF _____

COMMISSION EXPIRES: _____

NAME: _____

NOTICE:

“This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid for the payment amount set forth below. If you have not been paid, use a conditional release form.”

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

(To be exchanged for Monthly Progress Payments)

Project:

Job No.: _____

The signer of this document has been paid and has received a progress payment in the sum of \$ _____ for all labor, services, equipment, or materials furnished to the property or to Tribble & Stephens Construction, Ltd. (person with whom signer contracted) on the property of _____

(owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic’s lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer’s position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Tribble & Stephens Construction, Ltd. (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer’s laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____ (Company Name)

By _____ (Signature) _____ (Printed Name & Title)

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she is the _____ of _____, and that he/she executed this instrument on behalf of said corporation as its act and deed, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 20____.

“S E A L”

NOTARY PUBLIC, STATE OF _____

COMMISSION EXPIRES: _____

NAME: _____

ATTACHMENT D – “IC”

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT
(To be submitted with Final Retainage Billing)

Project:

Job No:

On receipt by the signer of this document of a check from Tribble & Stephens Construction, Ltd. (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____

(owner) located at _____

(location) to the following extent:

(job description)

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to Tribble & Stephens Construction, Ltd. (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date _____
(Company Name)

By _____
(Signature) (Printed Name & Title)

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she is the _____ of _____, and that he/she executed this instrument on behalf of said corporation as its act and deed, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____,
20____.

“S E A L”

NOTARY PUBLIC, STATE OF _____

COMMISSION EXPIRES: _____

NAME: _____

NOTICE:

“This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid for the payment amount set forth below. If you have not been paid, use a conditional release form.”

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

(To be exchanged for Final Payment)

Project:

Job No:

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to Tribble & Stephens Construction, Ltd. (person with whom signer contracted) on the property of

(owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic’s lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer’s position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer’s laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date _____ (Company Name)

By _____ (Signature) _____ (Printed Name & Title)

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she is the _____ of _____, and that he/she executed this instrument on behalf of said corporation as its act and deed, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 20__.

“S E A L”

NOTARY PUBLIC, STATE OF _____

COMMISSION EXPIRES: _____

NAME: _____

ATTACHMENT "E"

Page 1 of 3

SUBCONTRACTOR'S/SUPPLIER'S APPLICATION FOR PAYMENT

To: **TRIBBLE & STEPHENS CONSTRUCTION, LTD.**

From: _____

 Project: _____

Tribble & Stephens Subcontract/P.O.: _____ Payment Request/Invoice No.: _____

Period: _____ 2016 To: _____ 2016

STATEMENT OF CONTRACT AMOUNT: To Date This Month

1. Original Contract/Purchase Order Amount	_____	
2. <u>Approved</u> Change Order Nos.	_____	
3. Adjusted Contract/Purchase Order Amt. (1+2)	_____	
4. Value of Work Completed (SUB)	_____	
5. Material Stored on Site (SUB)	_____	
6. Total (4+5) (SUB) Total Invoiced (SUPPLIER)	_____	_____ Total Billed
7. Total percent complete (6 divided by 3)	_____	
8. Less Amount Retained (SUB)	_____	_____ Retainage
9. Total Less Retainage (6 minus 8) (SUB)	_____	
10. Total Previously Submitted	_____	
11. TOTAL DUE	_____	_____ Total Due

12. Total Pending Change Request (Attach Authorized Work Orders)

 Sign

 Date

PM's Estimated Change Requests

13. If No Pending Change Request As Of This Period, Sign and Date.

T&S must be notified of any pending change order requests with each pay application.

_____ (State) Tax Included in this Request @ _____ % (SUPPLIER)

Out-of-State Supplier Collecting Tax Permit No. _____

Out-of State Supplier NOT Collecting Tax ☐ Yes ☐ No

FOR TRIBBLE & STEPHENS USE ONLY				
APPROVALS		ACCOUNTING USE ONLY		NOTES
Job _____	Signed Contract _____	Original 1-A Received _____		
Code _____	Signed Change Order _____	Original 1-B Received _____		
Pay _____	Bond _____	W-9 _____		
2nd Tier Form Needed <input type="checkbox"/>	Insurance _____	Project Funded _____		
Supt. _____	E&O Insurance _____			
PM or PD _____				
<input type="checkbox"/> Subcontract	<input type="checkbox"/> Purchase Order			

PROJECT: _____

SECOND TIER SUBCONTRACTORS AND SUPPLIERS

SUBCONTRACTOR: _____
APPLICATION NO.: _____
APPLICATION DATE: _____
PROJECT: _____

NAME OF ALL 2ND TIERS	CONTACT AND PHONE NO.	DESCRIPTION OF WORK	A		B		C		D		E		SECOND TIER UNCONDITIONAL		JOINT CHECK REQ'D
			AMOUNT OF PURCHASE ORDER OR CONTRACT	TOTAL AMOUNT PREVIOUSLY EARNED	AMOUNT EARNED THIS PERIOD	BALANCE TO COMPLETE	AMOUNT EARNED LAST PERIOD	FORMS II A AND CONDITIONAL							
								FORMS III A RECEIVED							
										(II A LAST PERIOD)	(III A THIS PERIOD)				
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APPROVED FOR PAYMENT:
T&S PROJECT MANAGER:
T&S PROJECT DIRECTOR:

ATTACHMENT "F"

Any contractor or subcontractor responsible for portions of the Storm Water Pollution Prevention Plan (SWPPP) or who will engage in activities that will impact the efforts of the SWPPP should sign the following certification prior to providing services at the construction site.

NAME OF FIRM _____
Address _____
City: _____ State: _____ Zip: _____

BEST MANAGEMENT PRACTICES REQUIRED BY THE SWPPP

Sediment and Erosion Controls:

- Maintain and do not damage erosion control measures (e.g., silt fence, grass mesh strips, storm drain inlet covers)
- Keep dirt and sand piles away from curbs
- Pour waste concrete into approved disposal pits (min. capacity 0.5 CY)
- All site traffic must use the stabilized construction entrance.
- Other _____

Vegetative Techniques:

- Do not damage existing vegetation on the perimeter of the site during construction.
- Use grass strips or sod to control erosion during construction
- Other: _____

Solid Waste Management Practices

- Subcontractors are responsible to dispose of trash and debris each workday and remove it from the site or dispose of it in approved containers.
- Approved, covered & leak proof trash container(s) must be used throughout the project.
- Regularly schedule solid waste contractors to pick up trash containers.
- Other _____

Hazardous Waste Management Practices

- Spill Response Bulletins will be posted on-site or available in the site superintendent's vehicle.
- Store paints, thinners, acids and solvents in a structure secured for storm water exposure, or in the contractor's vehicles. Remove these items from the site daily.
- Ensure paints, thinners, acids and solvents disposed of at the site are properly disposed of.
- Contractors will remove from the site waste paints, thinners, additives, acids and solvents for proper disposal.
- NO waste products in the dumpsters except in open, empty containers.
- NO fueling tanks on-site. Vehicles will be fueled off-site or from truck mounted tanks.
- Other _____

Hazardous Materials Used during Installation

- Solvents Any solvents will be removed from site by the subcontractor
- Stains & paint Paints and stains will be stored inside and waste paint and stains will be removed from site by the contractor.
- Wood Preservatives Wood preservatives will be stored inside and waste wood preservative will be removed from site by the contractor.
- Lead-Based Paint None is to be used during project.
- Fuels Clean up any leaks or spills
- Oils Clean up any leaks or spills
- Grease Clean up any leaks or spills
- Pesticides Pesticides, if used, will be applied according to the manufactures labeled instructions, and will not be applied just before a rain event. Excess pesticides will be removed from the site once application is complete. Clean up any leaks or spills.
- Fertilizer Fertilizer, if used, will not be applied just before a rain event, and will not be stored on-site for any length of time. Clean up any leaks or spills. Remove from site.
- Roofing Tar Waste tar will be disposed of in covered container and excess tar will be removed from site by the contractor.
- Acid All acid bottles will be removed from site by the contractor. No acid wash waters are to leave the site.
- Other _____

Paving Management

- Paving Paving will not be placed just before or during rain events. Waste concrete is poured into an approved disposal pit (min capacity 0.5CY)

Certification: *I certify that I understand the requirements as stated above and will provide the necessary management and resources needed to comply with the general National Pollutant Discharge Elimination System (NPDES) permit and/or the TPDES as outlined in the SWPPP.*

Signature: _____ **Date** _____

Title _____