



13725 W. 109th Street
Lenexa, KS 66215
(913) 317-3700

Subcontract #: _____

STANDARD FORM OF SUBCONTRACT

This Subcontract is made this _____, by and between **MW BUILDERS, INC.** (hereinafter called "MW") and _____ ("**Subcontractor**").

MW has a Contract dated _____ with _____, hereinafter called "**Owner**" to furnish all the labor, materials, supplies, equipment and facilities and to perform all the work for the construction and completion of _____, herein called "**Project**" in accordance with the contract and all documents and other matters made part of said contract, including the plans, specifications and conditions for said Project prepared by _____ herein called "**Architect**," together with modifications thereof and addenda thereto, and any other document binding upon MW, herein collectively called the "**Prime Contract**," all of which are incorporated by reference and expressly made a part hereof.

SECTION 1. THE WORK

1.1 Subcontractor shall furnish all the labor, materials, supplies, equipment and facilities to perform all the work required by this Subcontract for the construction and completion of the Project in accordance with the Prime Contract which is incorporated by reference and expressly made a part hereof and herein referred to as "the Work". Subcontractor acknowledges that it has been given the opportunity to examine the site and to review all of the documents comprising the Prime Contract, and agrees to be bound by the terms of the Prime Contract to the same extent that MW is bound for the work contemplated by this Subcontract. Subcontractor acknowledges that it has the financial ability, manpower, tools, equipment, expertise and all other things necessary to fully perform this Subcontract within the time allotted. The following documents are incorporated into and are part of this Subcontract:

Exhibit A:	Scope of Work
Exhibit A-1:	Texas Indemnity
Exhibit B:	Plans and Specifications
Exhibit C:	Jobsite Conditions and Requirements
Exhibit D:	Insurance Requirements
Exhibit E:	Subcontractor Tax Payer ID and Status
Exhibit F:	EEO Certification
Exhibit G:	Partial Pay Requirements/Lien Release
Exhibit H:	Final Pay Requirements/Lien Release
Exhibit I:	Performance Bond Form
Exhibit J:	Payment Bond Form
Exhibit K:	Subcontractor Application for Payment/Billing Schedule
Exhibit L:	Statement of Safe Work Practices
Exhibit M:	Joint Check Summary
Exhibit N:	Owner Lien Release Forms

1.2 Subcontractor accepts sole and exclusive responsibility for the Work covered hereby, and shall provide continuous supervision for such work during the progress thereof at the jobsite. No advice, recommendations or assistance that Owner or MW may give to Subcontractor shall operate to relieve Subcontractor of complete responsibility for such Work. If Subcontractor deems that any necessary condition is unsatisfactory, unsuitable

or differs from any representation hereof or from industry standards, it shall give prompt written notification of the condition to MW before proceeding with further work, and shall not proceed until MW gives written instructions with respect to such conditions. All work shall be performed to the satisfaction of MW, Owner and/or Architect. If Subcontractor does proceed without such written instructions, it shall do so at its own risk, and be liable for any resultant expense to MW as well as for any necessary changes in or correction of the Work involved. In the event that any of Subcontractor's work is deemed to be defective by MW, Owner, or any inspecting agent, building inspector or other governing approval body, Subcontractor shall immediately remove and replace that work at its own expense upon written demand by MW, or MW will arrange for the defective work to be removed and replaced at Subcontractor's expense.

1.3 If Subcontractor further subcontracts with any other person or firm to perform any part of its work, Subcontractor shall obtain the written agreement of that person or firm to be bound to all applicable portions of this Subcontract and the Prime Contract, including all insurance, indemnity and warranty requirements.

1.4 Subcontractor is entitled and expected to examine all portions of the Prime Contract pertaining to its work. Subcontractor acknowledges that drawings may be diagrammatic, and that Subcontractor's obligation is to furnish a total functioning system, and will perform all work necessary to that end whether explicitly shown or not. Any of Subcontractor's work shown on the drawings and not mentioned in the specifications or described in any documents forming part of the Prime Contract, shall be performed by Subcontractor as part of this Subcontract. All drawings and specifications and other contract documents shall be construed as supplementing one another. Dimensions given on the plans and specifications are approximate only, and Subcontractor is responsible for insuring proper fit of its Work with contiguous work and shall do all cutting and patching necessary to make its work match that of other trades. Subcontractor agrees that all its Work, including testing, inspections, permits, will be in compliance with all such requirements.

1.5 Subcontractor shall conform to and abide by any additional specifications, drawings or explanations furnished by MW to detail and illustrate the work to be done at no additional cost unless such cost is agreed to in writing in advance. Any failure on Subcontractor's part to detect or report discrepancies in the work of others to MW in writing prior to disturbing them will relieve MW of liability for any claim by Subcontractor to be compensated for any damage resulting there from.

1.6 Subcontractor agrees to be bound to MW by all terms of the Prime Contract applicable to this Subcontract and Subcontractor shall fully assume and perform all such responsibilities of MW to Owner under the Prime Contract for the performance of everything subcontracted to Subcontractor. Subcontractor will perform this Subcontract so as not to violate any terms, covenants or conditions of the Prime Contract.

1.7 This Subcontract shall bind the representatives, executors, administrators, successors, receivers, and assigns of the parties hereto.

1.8 Neither this Subcontract, nor any right hereunder, including the right to receive funds, may be assigned without the prior written consent of MW.

1.9 The provisions contained in this Subcontract are in addition to provisions contained in the Prime Contract. In the event of any conflict between such provisions, the provisions of this Subcontract shall govern, except that the document calling for the highest duty and/or most complete scope of work with respect to the Work covered by this Subcontract or indemnity provisions shall govern, it being the intent of the parties hereto that MW be fully indemnified by Subcontractor against any liability or potential liability MW might have on account of the Work covered by this Subcontract.

1.10 Subcontractor acknowledges that it is an independent contractor, and no action of MW under the terms of this Subcontract shall affect that status or be deemed to direct the means and methods of performance of Subcontractor's work.

1.11 To the extent any of the provisions in this Subcontract, are declared void or unenforceable by legal proceeding, state law, or otherwise, then the parties expressly agree that the provisions in this Subcontract will be enforced to the fullest extent possible in order for MW to obtain the terms and conditions bargained for under

this Subcontract, including without limitation, allowing a court of law to edit the Subcontract, as necessary, in order to modify the provisions to make them enforceable.

SECTION 2. PAYMENT

2.1 MW agrees to pay Subcontractor for said work and everything required of Subcontractor in and by the Subcontract the sum of _____ Dollars (_____), subject to additions and deductions for changes as may be agreed upon in advance in writing and subject to the other terms of the Subcontract. It is agreed that no payments are to be made to Subcontractor unless its rate of progress, work done and materials and services furnished are satisfactory to Owner and MW.

2.2 Subcontractor shall submit to MW applications for progress payments in a form and within time periods as directed by MW. Payment shall be made only for actual work performed to the satisfaction of Owner and MW. Each billing shall be supported by evidence satisfactory to MW of Subcontractor's payment of the labor, services and materials listed therein, including, upon request, delivery of lien waivers in the form set out in **Exhibit G**, fully executed by Subcontractor's sub-subcontractors and suppliers. If Subcontractor seeks, and the Prime Contract allows, payment for stored materials, it shall submit documentation satisfactory to MW and Owner to verify delivery to an insured warehouse. Subcontractor shall remain responsible for insuring and safeguarding stored materials until actually installed and accepted by Owner. Payment shall be due Subcontractor ten (10) calendar days after MW receives payment from Owner, less retainage of **TEN** percent (**10%**) which MW may withhold from payments otherwise due Subcontractor.

2.3 In the event any items performed by Subcontractor are to be paid for at unit prices, the quantities shown are estimates only and the amounts to be paid Subcontractor shall be determined by the actual quantities of work performed or material furnished or both, and as determined and paid for by Owner, or its authorized representatives.

2.4 MW shall have the right to withhold, out of monies otherwise due to Subcontractor: the sum assessed against MW, or the actual cost to MW (whichever is greater) per day for each and every day required to complete the work beyond the time allowed in this Subcontract or the Project Schedule therefore, as liquidated damages and not as a penalty; any sums which Subcontractor has not paid for or on behalf of its employees, such as withholding taxes or pension contributions, or penalties thereon, until such time as Subcontractor provides written evidence from the appropriate entity that Subcontractor's obligations have been satisfied; Claims of sub-subcontractors or suppliers; failure of Subcontractor to abide by requirements of this Subcontract with respect to furnishing of insurance certificates, bonds, submittals or other documents; an amount equal to damages arising out of Subcontractor's work or its failure to perform in accordance with this Subcontract, including damages sustained by MW, until indemnity acceptable to MW is furnished by Subcontractor; such sums which MW determines are reasonably necessary to protect MW from costs or expense as a result of any default by Subcontractor, or good faith belief by MW that Subcontractor may not be capable of performing its obligations under this Subcontract Agreement; and/or as provided by Section 11.5 as set forth below. Subcontractor acknowledges that liquidated damages and/or delay damages may be assessed against MW by Owner for late completion of the Project. Subcontractor shall be liable for, and MW shall have the right to withhold from any payments due subcontractor, the proportionate share of any liquidated or other delay damages assessed against MW by Owner which are caused, in whole or in part, by delays in the work of Subcontractor, in addition to MW's own damages for delay.

2.5 Subcontractor agrees that monies received for the performance of this Subcontract shall be held in trust by Subcontractor for the benefit of all its sub-subcontractors, suppliers, laborers and materialmen, and Subcontractor shall not itself have any interest in such funds until these obligations have been satisfied in full. Subcontractor agrees that all funds received shall be used first for payment of labor, material, equipment, supplies and services related to this work and said monies shall not be diverted to satisfy obligations of Subcontractor on other contracts until all obligations under or in connection with this Subcontract are satisfied in full. MW may withhold any payment or pay directly or by joint check to sub-subcontractors or suppliers unless Subcontractor has furnished MW with evidence satisfactory to it that Subcontractor has paid such debts in full and performed all other obligations incumbent on Subcontractor.

2.6 Final payment hereunder shall be made within ten (10) calendar days after all of the following items have occurred: (a) completion of said Project; (b) written acceptance thereof by Owner and Architect; (c) full and final payment by Owner therefore to MW; (d) a full release, in the form of **Exhibit H**, of all claims against Owner, MW and the Project has been received by MW; and (e) receipt by MW of an executed consent of Subcontractor's surety to such final payment.

2.7 Subcontractor hereby acknowledges that all progress and final payments to it are contingent upon MW's receiving payment from Owner, Subcontractor expressly agreeing to accept the risk that it will not be paid for work performed by it in the event that MW, for whatever reasons, is not paid by Owner for such work. Subcontractor represents that it relies primarily for payment on the credit and ability to pay of Owner and not of MW, and Subcontractor agrees that payment by Owner to MW for work performed by Subcontractor shall be a condition precedent to any payment obligation of MW to Subcontractor. Subcontractor agrees that the liability of the surety on MW's payment bond, if any, for payment to Subcontractor, is subject to the same conditions precedent as are applicable to MW's liability to Subcontractor. Provided, however, that nothing in this Subcontract shall be construed to diminish Subcontractor's lien rights against Owner's property in the event of non-payment by Owner to MW.

2.8 Under no circumstances shall prior passage of title to Owner or MW, prior acknowledgment of good condition by Owner, Architect or MW, prior payment by Owner or MW, acceptance of such release or acceptance, partial or full occupancy, use or installation of any work performed or articles delivered hereunder be deemed to (a) constitute acceptance or approval of work done hereunder, (b) affect the responsibility of Subcontractor to perform as required, (c) affect the right of MW or Owner to reject any such work determined upon inspection not to be in the condition required, or (d) be acceptance of defective work or as a waiver of MW's rights and Subcontractor's obligations hereunder. Without limitation on the foregoing, any acceptance of Subcontractor's work hereunder shall not relieve or discharge Subcontractor or its surety from any of its obligations and warranties hereunder.

2.9 If any payment from Owner to MW is delayed due to Subcontractor's failure to settle all claims against it for work under this Subcontract, or to Subcontractor's failure to perform completely any condition incumbent on it hereunder or for any other reason attributable to Subcontractor, then Subcontractor will reimburse MW for all expense or loss incurred, including attorneys' fees, as a result. Notwithstanding anything herein to the contrary, MW has the absolute right to withhold and set off from funds otherwise due Subcontractor on this Project any amounts due MW from Subcontractor on any other Project and, if MW exercises such right of setoff, then Subcontractor hereby waives any lien claims and bond rights on this Project as to such amounts so set off.

SECTION 3. SCHEDULE OF WORK

3.1 TIME IS OF THE ESSENCE, and all of the Work of Subcontractor shall be completed within the time required by the Prime Contract or such shorter period of time as MW shall schedule or deem necessary, and that will not delay or damage MW or any other subcontractor on the Project. Subcontractor shall begin Work as soon as instructed to do so by MW and shall carry the same forward as determined by MW, including re-sequencing Work when MW so directs. Subcontractor shall cooperate in developing and updating schedules for the Project. MW may, at its option and without Subcontractor receiving any additional compensation therefore, require Subcontractor to increase its personnel and/or equipment.

SECTION 4. DELAYS

4.1 MW shall not be liable to Subcontractor for delay to Subcontractor's Work for any reason, other than to pass on to Subcontractor whatever compensation is obtained by MW from the Owner on Subcontractor's behalf. No claim for an extension of time or damages shall be allowed to Subcontractor for any cause or under any circumstances unless Subcontractor gives a written notice to MW within three (3) calendar days from the time of the beginning of the occurrence causing the delay. If Subcontractor's Work is delayed by, or the work of the Project is in the opinion of MW jeopardized by labor disputes, pickets, strikes or work slowdowns, on 24 hours' notice, MW may declare Subcontractor to be in default and proceed according to Section 11 below. Subcontractor shall indemnify, defend and save harmless MW from all liability and expense which MW itself may

incur by reason of any delays caused or contributed to by Subcontractor, its agents, employees, suppliers or sub-subcontractors.

SECTION 5. CHANGES

5.1 MW may, at any time, without notice to Subcontractor's surety and without invalidating this Subcontract or any surety bond, make any changes or alterations in the work covered by this Subcontract or order extra work which it may deem expedient. Subcontractor and its surety agree to increase the penal sum of any surety bond for work under this Subcontract in an amount equal to any increase in price hereunder. No alteration or change or extra work shall be performed by Subcontractor except upon the written order of MW. If no additional time or money is requested by Subcontractor within ten (10) days following notice of any proposed change or extra work, then no additional money or time shall be due Subcontractor. Any request for a Change Order shall be accompanied by all necessary documentation to substantiate the cost or time requested by Subcontractor, and in no case will Subcontractor charge more than that amount allowable by the Prime Contract, or as agreed to by MW for overhead and profit. Unless otherwise provided for hereinabove, in no event shall overhead and profit exceed the total amount of ten percent (10%). Notwithstanding any dispute under this Subcontract, Subcontractor agrees to continue with performance of its work hereunder. Failure of Subcontractor to promptly perform all changes whether or not an agreement as to a Subcontract adjustment has been reached shall constitute a default.

5.2 With respect to such changes, or alterations, or extra work, MW shall not be liable to Subcontractor for a sum greater than MW obtains from Owner for such changes, alterations or extra work, less reasonable overhead and profit to MW, and also less any costs and expenses incurred by MW. Any payments to Subcontractor for such work shall be conditioned upon a prior recovery therefore by MW from Owner. In the event of a decrease in contract price as a result of such change in the work, the decrease taken by Owner shall be controlling and binding upon Subcontractor. If there is a dispute as to such changes, deductions, alterations or extra work, then Subcontractor may exercise its disputes rights, if any, but in any case shall proceed with such work as directed by MW.

SECTION 6. WARRANTY

6.1 In addition to any other guaranties or warranties contained in this Subcontract or in the Prime Contract, Subcontractor unconditionally warrants that all labor, material and services employed and furnished by it in performing the Work are in strict accordance with the Prime Contract, and agrees at Subcontractor's expense to promptly correct upon demand, any and all defects to its own Work. The obligations set forth in this section are continuing and shall survive occupancy, completion of the construction project, acceptance of work, or final payment to Subcontractor.

SECTION 7. INDEMNITY

7.1 SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND (WITH COUNSEL REASONABLY SATISFACTORY TO MW) AND HOLD HARMLESS MW, THE OWNER AND THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES AND THEIR SURETIES, IF ANY, (HEREAFTER COLLECTIVELY THE "INDEMNIFIED PARTIES" AND INDIVIDUALLY "INDEMNIFIED PARTY") FROM AND AGAINST (I) ALL CLAIMS, CAUSES OF ACTION AND EXPENSES ARISING OUT OF INJURY TO (INCLUDING DEATH OF) ANY PERSONS OR DAMAGE TO PROPERTY ALLEGED TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF SUBCONTRACTOR, ITS AGENTS, EMPLOYEES, SUB-SUBCONTRACTORS, SUPPLIERS OR INVITEES, OR GROWING OUT OF OR INCIDENTAL, DIRECTLY OR INDIRECTLY, TO THE PERFORMANCE OF THE SUBCONTRACT REGARDLESS OF HOW SUCH INJURY, DEATH OR DAMAGE BE CAUSED, AND (II) ALL CLAIMS, CAUSES OF ACTION AND EXPENSES CAUSED BY ANY ACT OR OMISSION OF SUBCONTRACTOR, ITS AGENTS, EMPLOYEES, SUB-SUBCONTRACTORS, SUPPLIERS OR INVITEES, IN THE PROSECUTION OF THE SUBCONTRACT, INCLUDING ALLEGATIONS OF INFRINGEMENT OF PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS. SUBCONTRACTOR SHALL DEFEND ALL SUITS BROUGHT AGAINST ANY INDEMNIFIED PARTY ON ACCOUNT OF ANY SUCH CLAIMS OF LIABILITY, SHALL PAY ANY SETTLEMENTS MADE OR JUDGMENTS RENDERED WITH RESPECT THERETO, AND SHALL REIMBURSE AND INDEMNIFY MW FOR ALL EXPENSES, INCLUDING COURT COSTS AND ATTORNEYS' FEES, INCURRED BY MW.

7.2 The Subcontractor's obligation to provide a defense for an Indemnified Party shall arise regardless of the merits of the matter and shall continue until a final determination of fault is made. MW shall be entitled to recover actual, reasonable attorneys' fees and reasonable court costs and all other costs, (including but not limited to the costs of MW's in-house counsel) expenses and liabilities incurred by MW in an action brought to enforce all or any part of this provision. The Subcontractor's obligations under this subparagraph shall in no way limit MW's other rights and remedies under this Agreement.

7.3 If Owner or any other person or entity asserts a claim or institutes a suit, action or proceeding against MW involving the manner or sufficiency of the performance of the Work, Subcontractor shall, upon written request of Contractor, promptly assume the defense of such claim, suit, action or proceeding, at Subcontractor's expense, and Subcontractor shall also indemnify and save harmless, MW and its agents and employees from and against any liability, loss, damage, or expense, including attorneys' fees, arising out of or related to such claim, suit, action or proceeding in accordance with paragraph 7.1. MW shall also be entitled to recover attorneys' fees or other costs expended in enforcing this indemnification and defense obligation.

7.4 Subcontractor expressly agrees that these indemnification, defense and hold harmless agreements shall survive termination and/or completion of the Subcontract and are valid as of the date of the start of performance even if the Subcontract is not fully executed until after the date of the start of performance and that the agreement intended to include, without limitation, all claims, events, or losses which may have occurred on or after the date of the start of performance regardless of whether the Subcontract was fully executed prior to the date of the claim, event, or loss.

7.5 To the extent any of the provisions in this Section 7, or other indemnity provisions provided in this Subcontract, are declared void or unenforceable by legal proceeding or otherwise, then the parties expressly agree that the provisions in this Section or other indemnity provisions will be enforced to the fullest extent possible in order for MW to obtain the indemnification and defense responsibilities bargained for under this Subcontract, including without limitation, allowing a court of law to edit the Subcontract, as necessary, in order to modify the provisions of Section 7 or other indemnity provision to make them enforceable. It is expressly understood by the parties that the defense obligations under Section 7 and other indemnity obligations shall survive any legal determination striking down any indemnification responsibilities of the Subcontractor hereunder.

7.6 In claims against an Indemnified Party by an employee of Subcontractor, its lower-tiered subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 7 may not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor, or its lower-tiered subcontractors, under workers' compensation acts, disability benefits acts, or other benefit acts

THIS SECTION 7 SHALL BE CONSTRUED TO THE FULLEST EXTENT PERMITTED BY THE LAWS OF THE STATE WHERE THE PROJECT IS LOCATED. IF THE PROJECT IS LOCATED IN TEXAS, 7.1, 7.2, AND 7.3 SHALL BE REPLACED WITH THE ATTACHED TEXAS INDEMNITY EXHIBIT A-1.

SECTION 8. LIENS

8.1 Subcontractor shall fully protect, indemnify, defend and hold harmless MW and Owner from and against all liens and claims (hereinafter collectively referred to as "liens") of laborers, mechanics, or materialmen of Subcontractor and its subcontractors. In the event that any such lien shall be filed, Subcontractor shall promptly remove or discharge it. If Subcontractor shall fail to do so within three (3) calendar days after delivery of written notice from MW, MW shall, in addition to its other rights hereunder, have the right to remove and discharge it at Subcontractor's expense.

SECTION 9. INSURANCE

9.1 Subcontractor agrees to procure and carry, at its sole cost, until completion of this Subcontract and all applicable warranty periods, all insurance required of MW in the Prime Contract, with identical limits of liability and scope of coverages, or such higher amount set forth on Exhibit D. Subcontractor hereby acknowledges that it has read Exhibit D thoroughly and can and shall comply with all its terms. Evidence of such insurance must be provided to MW prior to the commencement of any work on site by Subcontractor. If Subcontractor should sub-subcontract any of this work to a third party, Subcontractor shall see to it that such third party maintains such insurance and shall furnish evidence thereof to MW.

SECTION 10. TERMINATION/SUSPENSION

10.1 If the Prime Contract is terminated or halted in whole or in part under the terms of the Prime Contract or by an order of court or other public authority, MW shall, at its sole option and discretion, have the right to terminate or suspend this Subcontract accordingly as of the date of such action. In such event MW shall not be liable to Subcontractor for any greater sum or time than that which MW receives from Owner or any other party on behalf of Subcontractor.

10.2 MW shall, at its sole option and discretion, have the right to terminate this Subcontract at any time. In the event the Subcontract is terminated for convenience, Subcontractor shall only be entitled to be paid whatever the Owner pays MW for the work performed by Subcontractor up to the time of termination.

10.3 In no event shall Subcontractor be entitled (a) to anticipatory profit or damages for any termination; (b) to assert a claim in quantum meruit or any other measure of damages other than that stated herein; or (c) to receive a sum in excess of what the Owner pays to MW for such work of Subcontractor.

SECTION 11. DEFAULT

11.1 If (i) a petition in bankruptcy or for an arrangement of creditors shall be filed by or against Subcontractor or Subcontractor shall become insolvent or make an assignment for the benefit of creditors or commit any act of bankruptcy, or, (ii) Subcontractor shall fail to furnish materials of the quality or do work in the manner required by the Prime Contract, or, (iii) Subcontractor shall die or otherwise become physically or mentally disabled, or, (iv) Subcontractor shall fail to promptly pay for all labor and material used in connection with this Subcontract, or fail to provide evidence of such payment, or (v) Subcontractor shall fail in any manner to perform the whole or any part of any provision contained or assumed herein, then and upon three calendar days' written notice to Subcontractor, Subcontractor shall be deemed to be in default.

11.2 In MW sole discretion, MW has (without waving any other rights) the right to:

(a) allow the Subcontractor to remain on the project and continue to perform its work. However, MW may provide supplemental labor, materials and equipment regarding Subcontractor's scope of work and deduct the entire cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to Subcontractor. MW may also take over or to cause others to take over any work being performed or to be performed under this Agreement, or any part thereof, together with any tools and equipment, and any appliances, materials and supplies ordered or fabricated, whether at the jobsite or elsewhere, and to complete such work for the account of Subcontractor by whatever method MW deems reasonably practical and expedient; in this regard, Subcontractor acknowledges that it is reasonable to employ a supplemental contractor or allow MW to self-perform 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 the payment terms of 11.4 and 11.7 apply to this subsection.

11.3 In the alternative, MW shall (without waiving any other rights) have the right to:

- (a) provide such materials, supplies, equipment and labor in addition to any supplied by Subcontractor, as may be necessary to complete Subcontractor's work and deduct the cost thereof from any money which is then or would thereafter otherwise be due Subcontractor, or
- (b) bar Subcontractor from the Project (with or without terminating the Subcontract) and enter upon the premises and take possession for use and consumption in completing the work of all the materials, supplies, tools, equipment, appliances and facilities of Subcontractor on the Project or at any storage location and complete the work, or have the same completed by others, or any combination of such methods.

11.4 In any such event, Subcontractor shall not be entitled to receive any further payment hereunder, and MW shall have no liability to Subcontractor therefore, until final payment for the entire Project has been received by MW from Owner, and Subcontractor shall only be entitled to, and MW shall only be liable for, the amount, if any, by which the unpaid portion of this Subcontract shall exceed the cost, expense and damage incurred by MW (including attorneys' fees) because of Subcontractor's default. If such amounts expended or incurred by MW exceed the balance of the Subcontract price, Subcontractor or its surety, or both, shall pay MW such excess promptly after MW's demand therefore, and upon their failure to do so, in addition to MW's rights on or under any bonds of Subcontractor, MW shall have the right to sell all materials, tools, appliances, equipment and facilities of Subcontractor and to apply the proceeds of such sale(s) to the obligation of Subcontractor and its surety who nevertheless shall remain liable for any deficiency. MW shall not be required to exercise any such possession and sale rights as a condition to receiving full payment from Subcontractor and its surety.

11.5 In the event of default, MW may also withhold amounts otherwise due under any other agreement between the parties to cover MW's reasonable estimate of any costs or liability MW has incurred or may incur for which Subcontract may be responsible under this Subcontract or any other agreement between the parties. For purposes of this paragraph the phrase "any other agreement between the parties" will be deemed to include any agreement between Subcontractor and MW or any joint venture or other entity in which MW and/or Subcontractor have an ownership interest.

11.6 In the event that MW finds Subcontractor in default under this Section, MW may (but shall not be obligated to) assume and become liable for obligations, commitments and unsettled claims that Subcontractor has previously undertaken in connection with said work. Subcontractor shall, upon request, execute and deliver all such papers and take all such steps, including the legal assignments of Subcontractor's sub-subcontracts, purchase orders and other contractual rights, as MW may require for the purposes of fully vesting in MW the rights and benefits of Subcontractor under such sub-subcontracts, purchase orders, other contracts, obligations or commitments.

11.7 In the event of the exercise of any default rights by MW as set forth above, all costs incurred, including (but not limited to) the cost of materials, labor, subcontractors, transportation, equipment expense and rentals thereon, supplies, services, insurance, taxes, appliances, tools, utilities, power, supervision, administration, job overhead, travel, legal and accounting fees and expenses, MW's general overhead as allocated to the work and other costs and expenses incurred or sustained by MW, plus ten percent (10%) of the actual cost of the work performed as set forth as well as the amount of all claims against Subcontractor paid by MW for which it deems itself liable or responsible to Owner, shall be deducted from the Subcontract price and sums otherwise due Subcontractor.

SECTION 12. PROTECTION OF PERSONS AND PROPERTY

12.1 Subcontractor shall be responsible for protection of its own property and Work until final acceptance. If Builder's Risk insurance is provided by MW or others, Subcontractor agrees to accept the amount paid from it as total compensation for a loss and to waive subrogation or other claims against MW, its insurers and Owner.

12.2 Subcontractor shall provide safe and proper facilities for inspection by MW and Owner of the work and materials of Subcontractor, whether in the field, at shops, or at any place where such materials may be in preparation, manufacture, storage or installation. If any retesting or reinspection is required due to failure of

Subcontractor's Work, or its unavailability for inspection at scheduled times, Subcontractor shall be charged for it.

12.3 Subcontractor shall closely adhere to all requirements of the Prime Contract concerning hazardous materials, and give MW sufficient advance notice of potential involvement of hazardous materials to allow for coordination of protection of persons and property. Subcontractor shall give immediate notice to MW of any injury to persons on the Project.

12.4 Subcontractor is responsible for protecting its personnel, materials, equipment and Work, and for taking reasonable precautions to avoid damage to the work of other contractors, the owner and adjoining property.

12.5 Subcontractor shall take all necessary safety precautions with respect to performance of the Subcontractor's Work and shall comply with applicable safety measures and with applicable laws, ordinances, rules, regulations, and orders of public authorities and with the requirements of the Subcontract Documents for the safety of persons and property. The Subcontractor agrees to participate in periodic site safety meetings as requested by Contractor, including weekly "toolbox talks". The Subcontractor shall comply with all Project Safety Requirements listed in this Section, and as requested by Contractor.

12.6 Subcontractor and its employees must, at a minimum, comply with all applicable laws, codes, rules, regulations and requirements pertaining to the safe performance of its Work, including the Federal Occupational Safety and Health Act (OSHA), state OSHA programs, and Contractor's Statement of Safe Work Practices. Subcontractor agrees to provide protection as is necessary to protect all persons and property from Subcontractor's operations. Subcontractor shall effectively secure and protect the Subcontractor's Work. The Subcontractor shall furnish all safety equipment required to safely perform the Subcontractor's Work.

12.7 The Subcontractor agrees and acknowledges that it has assumed full responsibility and liability for safety precautions in connection with the construction means, methods, techniques, sequences, supervision and procedures pertaining to Subcontractor's Work.

12.8 The Subcontractor hereby agrees to indemnify and hold the Owner, Contractor, Architect, and their agents, successors, heirs, assigns, and employees harmless from and against all claims, costs, damages, fines, and expenses, including attorneys' fees, arising from or in connection with Subcontractor's operations and the results of such operations. Without limiting the generality of the foregoing, Subcontractor agree to reimburse Contractor for any and all fines and/or penalties incurred as well as attorneys' fees incurred by Contractor as a result of or arising out of Subcontractor's Work.

12.9 Subcontractor's Work will be directed and supervised by a competent person as defined by OSHA. Such competent person will have a thorough knowledge of OSHA regulations and will be present at the Project site at all times that Subcontractor's Work is in progress.

SECTION 13. TAXES AND COMPLIANCE WITH LAWS

13.1 All state, federal and local taxes, whether on wages, property, purchases, excise or anything else, all required pension contributions, social security or other payments and all permits, fees and licenses relative to the work covered by this Subcontract are included in the price to be paid by Subcontractor under this Subcontract, and Subcontractor assumes and accepts exclusive liability for them.

13.2 Subcontractor shall comply with all federal, state or local laws, ordinances, rules, regulations and administrative orders, and OSHA requirements (including the furnishing of Safety Data Sheets) which are applicable to Subcontractor's performance of its Work under this Subcontract, and which are incorporated by

reference herein, and Subcontractor shall execute **Exhibit F** hereto, Equal Employment Opportunity Compliance Certificate, and return it with a signed copy of this Subcontract. Subcontractor shall indemnify and hold harmless MW on the account of any violations thereof relating to the Subcontract Work. Subcontractor agrees to indemnify MW against any expense incurred including imposition of fines which results from violation of such laws.

SECTION 14. DISPUTES, JURISDICTION, VENUE AND CHOICE OF LAW

14.1 Subcontractor agrees that the dispute resolution provisions of the Prime Contract between MW and Owner, if any, are incorporated by reference as part of this Subcontract so as to be binding as to disputes between Subcontractor and MW that involve, in whole or in part, questions of fact and/or law that are common to any dispute between MW and Owner or others similarly bound to such dispute resolution procedures, and that all such disputes may be consolidated for hearing and resolution by the same arbitration or other tribunal specified in the contract between MW and Owner. In addition in the absence of any requirement to mediate, MW reserves the right to require mediation as a condition precedent to any other dispute resolution set forth in paragraph 14.2 below.

14.2 Upon exhaustion of the dispute resolution above or if the conditions in paragraph 14.1 are not applicable, MW, at its sole option, has the right to elect resolution of all claims or disputes involving MW, Subcontractor or other interested third parties by litigation in court, mediation and/or arbitration. If MW elects to resolve disputes through litigation, no action or proceeding shall be commenced or maintained except in the District Court of Johnson County, Kansas, or in the United States District Court of Kansas, at Kansas City.

If selected, mediation and arbitration will be conducted pursuant to the Construction Industry Rules of the American Arbitration Association; the parties may use the American Arbitration Association to administer the dispute resolution process but are not required to do so. Unless otherwise required by the Prime Contract, this Subcontract and all disputes between the parties shall be governed by the laws of the State of Kansas.

14.3 Nothing contained herein shall excuse Subcontractor from completing the work according to this Subcontract, nor shall the pendency of any dispute or arbitration proceeding excuse any interruption, delay, default or non-compliance therewith.

SECTION 15. BONDS

15.1 Unless specifically waived by MW, Subcontractor, prior to commencement of any Work, shall furnish a performance bond and a payment bond each naming MW as obligee in a sum not less than the amount of this Subcontract and in the form of Exhibits J & I to this Subcontract, and with a surety on each bond acceptable to MW. No payment shall be due to Subcontractor until such bonds are furnished. The bonds shall assure the faithful performance of all of the terms of this Subcontract and the payment of all persons furnishing labor, services, equipment or materials used or purchased for use in the Work covered by this Subcontract. In the event that the amount of this Subcontract is increased, the bonds shall also automatically be increased in amount, without prior notice to the surety, and it will be the responsibility of Subcontractor to include in its proposals the cost of additional bond premiums.

SECTION 16. TEMPORARY FACILITIES, CLEANUP

16.1 Subcontractor shall furnish all its own temporary structures, scaffolds, lights, power, utilities, hoists, unloading, stocking, fuel, expendable supplies, shelters, building or fire protection, and other facilities. On a daily basis Subcontractor shall clean up and place all rubbish and debris resulting from its work in a dumpster provided by others. If Subcontractor refuses or fails to do so, MW may proceed with said cleaning, and charge Subcontractor its cost. Subcontractor is specifically responsible for the proper disposal of any hazardous waste involved in its Work, and such materials are not to be discarded in MW's trash containers.

SECTION 17. SAMPLES, SHOP DRAWINGS

17.1 Subcontractor shall submit all samples, shop drawings, test data and other data in accordance with Exhibit A to allow MW to process them and forward them as required by the Contract drawings in order to perform its obligations hereunder or required by the Owner, Architect, MW or the Prime Contract, but any handling, transmittal, approval or anything else done by MW with respect to these shall not relieve Subcontractor from responsibility for errors in the samples, shop drawings, or other data and shall not relieve Subcontractor of its obligations to perform its work in accordance with this Subcontract and of its responsibilities for any deviations from the requirements of this Subcontract. The dimensions given on the plans and in the specifications are approximate only, and the Subcontractor shall take such measurements at the Project as will insure the proper matching and fitting of the work covered by this Subcontract.

17.2 The work shall be in accordance with approved submittals except that the Subcontractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval and/or MW Builders review of Shop Drawings, Product Data, Samples or similar submittals unless the Subcontractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Subcontractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval or MW Builders review thereof.

17.3 Before and while proceeding with the work under this Subcontract, Subcontractor will accurately check everything previously or contemporaneously done by other trades in any way relating to Subcontractor's work and determine the correctness of same. Any failure on Subcontractor's part to detect or report such discrepancies to MW in writing prior to disturbing them will relieve MW of any and all claims by Subcontractor to be compensated for any costs, expense or damage resulting there from.

SECTION 18. LOSSES

18.1 Subcontractor agrees that it bears responsibility for its own Work, materials, supplies, tools and equipment until final acceptance of the Project, and acknowledges that it shall not look to MW to make good any loss or damage thereto except as may be specifically provided elsewhere in this Subcontract.

18.2 In the event of a loss by fire or other casualty, Subcontractor shall, as soon as possible thereafter, proceed to replace, restore or repair the portions of its work so damaged, as directed by MW. MW may (but is not obligated to) carry Builder's Risk Insurance on this construction Project. Should MW carry this insurance, Subcontractor shall nevertheless still bear responsibility for determining whether such insurance is in force, and sufficient to protect Subcontractor's interests. Subcontractor and its surety waive any right of subrogation against MW and Owner on any Builder's Risk or MW's Equipment Insurance policies issued in its name. If Subcontractor is included under a Builder's Risk Policy, it agrees to accept as total compensation for such loss the net amount paid to MW's on Subcontractor's behalf, after expenses.

SECTION 19. DECISIONS

19.1 In case of any dispute between the Subcontractor and MW, Subcontractor also agrees to be bound to MW to the same extent MW is bound to Owner by the final decision of a court of competent jurisdiction or any arbitration panel or other officer, agency, tribunal or board authorized or empowered to render the same by the Prime Contract, whether or not Subcontractor is a party to such proceeding. Nothing contained herein shall excuse Subcontractor from completion of the work in the manner provided in this Subcontract, nor shall the pendency of any dispute or arbitration proceeding excuse any interruption, deficiency, delay, default or non-compliance therewith.

SECTION 20. NOTICES

20.1 Written notice shall be deemed to be effective when delivered by personal delivery or confirmed telecopy sent during regular business hours or three (3) calendar days after deposited for mail, postage paid, with the United States Postal Service to the address for such party set forth herein, whichever first occurs. All notices and correspondence will be addressed to the representative whom Subcontractor designates in writing or, in the absence of such designation, Subcontractor's Superintendent.

SECTION 21. ATTORNEYS' FEES, COSTS AND EXPENSES

21.1 If either party commences an action against the other to enforce any of the terms of the Contract Documents or because of the breach by either party of any of the terms of the Contract Documents, Subcontractor, whether by out-of-court settlement or final judgment, shall pay to MW the actual costs and expenses incurred in connection with the prosecution or defense of such action and any appeals in connection therewith, including actual accountants' fees and actual attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including, without limitation, actual attorneys' fees and costs and expenses incurred in connection with: (i) enforcing, perfecting and executing such judgment; (ii) post-judgment motions; (iii) contempt proceedings; (iv) garnishment, levy, and debtor and third-party examinations; (v) discovery; and (vi) bankruptcy litigation.

SECTION 22. LABOR MATTERS

22.1 Subcontractor shall abide by any labor agreements, two-gate agreements, prevailing wage laws and all other terms and conditions of the Contract Documents as may pertain to its labor relations on the Project. Subcontractor agrees to remove from the Project any employee or any sub-subcontractor's employee to whom MW has reasonable objection. No work stoppage caused by a strike, picketing, boycott or by any voluntary or involuntary cessation of work by employees of Subcontractor shall be permitted. Should Subcontractor's Work cease due to a labor dispute, upon 24 hours' written notice from MW, Subcontract shall be deemed to be in default and MW may take any of the steps set forth in the Default section.

22.2 Subject to MW's approval, Subcontractor shall designate a competent superintendent to direct its work and shall not remove its superintendent from the work without MW's written approval. This person shall be fluent in all languages necessary to effectively communicate with MW's staff and Subcontractor's staff and sub-subcontractors, and shall represent Subcontractor for all purposes, shall be designated the responsible member of Subcontractor's organization at the site whose duty shall include the prevention of accidents and shall attend all job meetings which might concern Subcontractor's Work. He or she shall give MW's Superintendent his/her contact information. Any employee of Subcontractor found by MW to be unskilled or unqualified or whose employment, in MW's judgment, would be detrimental to MW's work shall promptly be removed from the work upon receipt of written notice from MW and shall not be re-employed on the work without the written approval of MW.

SECTION 23. SUBSTANCE ABUSE POLICY

23.1 Subcontractor agrees to implement such substance abuse policy as required (including that of the Owner, General Contractor, or Contractor) to comply with all Prime Contract documents, local, state and federal drug-free workplace acts or laws. If so directed by Contractor, Subcontractor agrees to implement a specific substance abuse policy to comply with the contract documents and laws referenced above.

SECTION 24. SUB-SUBCONTRACTORS

24.1 Subcontractor shall submit to MW a list of all proposed sub-subcontractors within ten (10) days of execution of this Subcontract, and MW shall have ten (10) working days within which to notify Subcontractor of rejection of any of them. If MW gives this notice, Subcontractor shall not use the rejected sub-subcontractor on the Project. Failure of MW to reject listed proposed sub-subcontractors shall not constitute approval of them, nor shall it relieve Subcontractor of full responsibility for their work.

24.2 If requested, Subcontractor shall furnish copies of material orders and sub-subcontracts. No sub-subcontracts shall prohibit assignment of rights from Subcontractor to MW.

24.3 Subcontractor shall require each of its sub-subcontractors to maintain insurance coverage to the same extent as that required by Section 9 of this Subcontract. If evidence of acceptable insurance is not provided for each such sub-subcontractor, MW may declare Subcontractor to be in default of this Subcontract Agreement.

24.4 In the event that the Prime Contract provides for arbitration or other non-judicial resolution of disputes, Subcontractor and Sub-Subcontractor expressly agree to participate in, and be bound by, those procedures for resolution of disputes.

24.5 Subcontractor further agrees that the following language shall be included in all agreements, sub-subcontracts or purchase orders which it may enter in connection with this Subcontract:

“The Subcontract which (Subcontractor) has entered with MW Builders, Inc. contains provisions applicable to this agreement, and it is understood that all those provisions are incorporated herein by reference, including specifically a provision which may require arbitration or other non-judicial resolution of disputes, and (Subcontractor) has agreed to include a similar provision in all its sub-subcontracts and purchase orders. It is hereby agreed that, if (Subcontractor) is required to participate in and be bound by such procedures, the same requirement shall also be a part of this agreement.”

SECTION 25. BORROWED EQUIPMENT

25.1 In the event MW consents and agrees to allow Subcontractor the use or borrowing of MW’s equipment (“Use”) on the Project, Subcontractor hereby irrevocably agrees:

25.1.1 To assume entire responsibility and liability for the operation and protection of MW’s equipment and its operator, if any, during the period of Use, and for any claim, damage, action or demand based on or arising out of injuries, including death, to persons or damages to, loss or destruction of property, including the loss of use thereof, sustained or alleged to have been sustained by MW, its agents, employees, or subcontractors (“Indemnitees”), regardless of whether such claim, damage, action or demand is/are founded in whole or in part upon strict liability or any degree of alleged negligence, whether sole or concurrent, of the Indemnitees;

25.1. 2 To waive and release all claims for any loss or damage to the undersigned, its employees, any real or personal property or any other thing arising out of, relating to or resulting from the use of MW’s equipment by the undersigned;

25.1.3 To use the equipment solely in the conduct of its business on the Project and in a careful and proper manner and will not loan or allow anyone outside its own organization to use said equipment, and upon cessation of use of MW’s equipment, the undersigned agrees to immediately return the equipment to MW in as good as condition as when it was received;

25.1.4 The undersigned acknowledges that the equipment is of a size, design, capacity and manufacture of the equipment is suitable for its intended use and it accepts the equipment in its “AS IS” condition.
THE UNDERSIGNED FURTHER ACKNOWLEDGES THAT MW IS NOT A MANUFACTURER OR SUPPLIER OF THE EQUIPMENT AND THEREFORE MAKES NO WARRANTIES, EXPRESSED OR

IMPLIED WHATSOEVER, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE;

25.1.5 The undersigned represents that any operator or user of the equipment shall be properly certified and/or trained in its operation and further agrees to assume and shall bear the entire risk of loss and/or damages to the equipment from any and every cause whatsoever, whether or not insured, until the equipment is returned to MW. The undersigned also represents and warrants that it has adequate insurance coverage to insure and will insure the equipment before using the same against all risk of loss or damage or injury from every cause whatsoever in an amount not less than one million dollars and shall immediately notify MW of any malfunction, breakdown or injury resulting from, or related to, the use of the equipment;

25.1.6 TO THE FULLEST EXTENT PERMITTED BY LAW, THE UNDERSIGNED SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS MW (INCLUDING THE AFFILIATES, PARENTS AND SUBSIDIARIES, THEIR AGENTS AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSS AND EXPENSES (INCLUDING WITHOUT LIMITATION LEGAL FEES AND DISBURSEMENTS) ARISING OUT OF, IN ANY WAY RELATED TO AND/OR RESULTING FROM THE USE OF MW'S EQUIPMENT FOR ANY CLAIM, DAMAGES, LOSS OR EXPENSE ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY OR ANY OTHER DAMAGE OF ANY KIND, INCLUDING LOSS OF USE RESULTING THEREFROM. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, OR ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO MW;

25.1.7 The undersigned agrees to add MW as an additional insured within 3 business days from the date of signing this agreement to all of its insurance certificates related to the above referenced Project; and

25.1.8 The terms, conditions and obligations under this Section survive the termination or completion of this Agreement.

SECTION 26. CONFIDENTIALITY AND PROPRIETARY RIGHTS

26.1 During the course of this Agreement, either party may have or may be provided access to the other's confidential information and materials. If MW and Subcontractor have entered into a separate written agreement governing the use and control of each parties' confidential information, such written agreement shall control. If the parties have not entered into such separate written agreement, then each party hereby agrees to maintain such information in confidence and to limit disclosure and use of such information to the extent necessary for the parties hereto to carry out their respective obligations set forth in this Agreement. Each party hereto agrees to take all reasonable precautions to treat such information as it treats its own confidential and proprietary information.

SECTION 27. EFFECTIVE DATE

27.1 Subcontractor's signature and return of this document as presented, or its commencement of any of the Work covered by this Subcontract, shall constitute acceptance of all of its terms and conditions. If this Subcontract is not signed and returned to MW within ten (10) days of the date stated on page 1 above, however, it may be deemed voidable solely at the option of MW. Unless and until Subcontractor has furnished MW with the required bonds, Certificates of Insurance and any other documents required by the Prime Contract, and, if applicable, Subcontractor has been approved by Architect, Owner and any other party, Subcontractor shall not proceed to perform any work.

SECTION 28. INTEGRATION; NO WAIVER

28.1 This Agreement constitutes the entire agreement between the parties hereto related to the subject matter hereof and supersedes all prior or contemporaneous understandings, statements or agreements between the parties on such subject matter. Each party acknowledges and agrees that no employee, officer, agent or representative of the other party has the authority to make any representations, statements or promises in

addition to or in any way different than those contained in this Agreement, and that it is not entering into this Agreement in reliance upon any representation, statement or promise of the other party except as expressly stated in this Agreement.

28.2 No changes, amendments, or clarifications of any of the terms and conditions of this Agreement shall be valid or effective unless in writing and signed by an authorized representative of the party to be bound. The failure by either party to enforce at any time any of the provisions of this Agreement, or to exercise any election or option provided herein, shall in no way be construed as a waiver of such provisions or options, no in any way affect the validity of this Agreement or any part thereof, or the right of either party thereafter to enforce each and every such provision.

28.3 This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together shall constitute one agreement. Signature pages to this Agreement transmitted by facsimile or by e-mail in portable document format will have the same legal effect as manually executed signature pages.

IN WITNESS WHEREOF, the parties have executed this agreement in multiple copies on the day and year first above written.

MW BUILDERS, INC.

«FirmName»

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____