

## EXHIBIT B-2

### **SUPPLEMENTARY CONDITIONS**

(Amerwest Development, LLC & Subcontractor)

These Supplementary Conditions "Exhibit B-2" (the "Supplement") are hereby incorporated into and forms an integral part of the AIA form Subcontract dated \_\_\_\_\_, (the "Subcontract") between Amerwest Development, LLC (herein as "Amerwest"), and \_\_\_\_\_, (herein as "Subcontractor") for the project (the "Project") at the site location described in Exhibit "E" (the "Property").

This Supplement is hereby incorporated into the Subcontract Documents and the Subcontract Documents are hereby amended and modified in the conditions as set forth below. To the extent the amendments or modifications contained in this Supplement contradict or conflict with other provisions of the other Subcontract Documents, the terms and provisions of this Supplement shall control. References to standards, specifications, manuals, treatises, codes and regulations contained in the Subcontract Documents shall mean those prepared by technical societies, governing bodies, and associations and shall mean latest edition published and in current use. The Subcontract Documents shall include and incorporate by reference applicable zoning and building codes, Exhibits as are attached to the Subcontract, and the Contract Documents of the Contract between Owner and Amerwest for the Project (the "Prime Contract"), all by reference; except Exhibits "B-2", and "C", of the Prime Contract are excluded from this Subcontract and do not form a part of the Subcontract Documents. This Supplement in addition to the Exhibit "B-3" and Exhibit "C" – Schedule of Values, as are attached to the Subcontract, replace and are incorporated in to and form a part of the Subcontract Documents (and are in stead of the corresponding Exhibits of the Prime Contract). Subcontract Documents as are modified and/or clarified herein shall be the base documents used by the Subcontractor, its sub-subcontractor(s), materialmen, and supplier(s) as is required or necessary to meet obligations required under the Subcontract. Herein, Amerwest and Subcontractor are jointly the Parties, individually a Party.

The following terms and conditions are within the scope of Work, Subcontract Documents, and the Subcontract Sum for the Subcontract:

1) The "Work":

- a. The term 'Work' is the whole of the activities and obligations, direct or indirect, on or off of the Property for the Project, as are necessary and/or required to complete the intent of the Subcontract (and scope of work therein), the Subcontract Documents, and to satisfy the Architect and Owner within the terms and conditions for the Prime Contract. Subcontractor shall be solely responsible as a portion of the Work for all construction means, methods, techniques, sequences, and procedures to accomplish the Work and coordinate the Work with others.
- b. The execution and delivery of the Subcontract does not constitute a guaranty or commitment by Amerwest that Amerwest will release to Subcontractor any additional portions of the work detailed in the Plans and/or Contract Document of the Prime Contract. The Parties acknowledge and agree that Amerwest and Subcontractor are contractually bound only to the extent that Work is released in writing by Amerwest to Subcontractor; and, thereafter, for that released Work the terms and conditions of this Agreement shall be in force and effect.

2. Subcontract Site & Work Condition's Inspections:

- a. Subcontractor is required prior to commencing Work to compare Drawings and Specifications with any work in place, and inform themselves of all conditions. Subcontractor has been paid as a portion of the Subcontract Sum to identify and seek clarification of any ambiguities in the Subcontract Documents, to review Drawings and Specifications therein, to inspect the site and specific Work areas and conditions therein.
- b. If any part of the Subcontractor's Work depends for proper execution or results upon the Work of any other party, the Subcontractor (prior to beginning his Work) shall inspect and immediately report to Amerwest any defects in other parties' work that render it unsuitable for such proper execution and results. Subcontractor's failure to so inspect and report in writing shall constitute an acceptance of the other subcontractor's work as fit and proper for the reception of Subcontractor's Work. If Subcontractor performs Work without providing notice that remedial work is required, Subcontractor accepts surface and sub-surface conditions and waives any claims for extra compensation to repair or remedy such conditions or for replacement of the Work arising or resulting from the defect.

3. Materials Installation & Substitutions; Drawings; Allowances, Permits, Fees, and Licenses:

- a. Materials, products or other articles shall be handled and installed in compliance with manufacturer's directions, Project specifications, Project plans, Subcontract Documents, technical manuals, and applicable building codes unless specifically noted otherwise. There shall be no substitutions unless approved in writing by the Architect and Owner. Where a substitution is requested by Subcontractor, there shall be no increase in the Subcontract Sum.
- b. Subcontractor will be furnished free of charge a maximum of two (2) copies of Plans, Drawings and Specifications. Additional copies may be purchased at cost of reproduction and handling.
- c. Where there is an allowance for a portion of the Work established as detailed in an Exhibit to the Subcontract then the line item allowance is inclusive of any and all direct and indirect costs, overtime, general conditions, overhead, handling, storage, layout, and any and all other costs or expenses, known or unknown, necessary for the completion of that portion of the Work.

- d. If requested by Amerwest, the Subcontractor shall prepare and submit to the Architect for approval six copies of complete shop drawings for the appropriate portions of the Work. Work such affected shall not proceed until Architect's approval is received. Shop drawings, product data, samples, and additional submittals shall be reviewed for approval by the Architect at Subcontractor's expense. There shall be no claim for an increase in Subcontract Sum based upon Subcontractor's shop drawings, product date, samples and similar submittals for such Work.
4. Subcontractor's Employees:  
Subcontractor shall be solely responsible for payment of all income, withholding, social security, unemployment and any and all other taxes or fees imposed at any level by any party, organization, governmental or administrative body in connection with wages it pays or persons it employs or others employ in the completion of the Work. Subcontractor agrees that if funding for this Project involves HUD or other public or governmental related financing, then Subcontractor commits to comply with David-Bacon wage guide lines obligations and Form HUD-2554 obligations.
5. Work Area; Benchmarks; Levels and Grades; As Built:
- a. Areas of the site, which may be used by Subcontractor, are limited and shall be approved by Amerwest before starting Work. Subcontractor shall use its best efforts and be responsible at all times that: (i) the coastal construction set-back lines and/or erosion control lines established for the Project, if any, are not violated; (ii) any and all conservation areas or nature preserve areas located in or adjacent to the Project are not entered or disturbed, except when authorized by Owner or Amerwest; (iii) all vehicles (whether Subcontractor's, sub-subcontractor's, supplier's or others') are parked, and all equipment and materials are kept, at all times on-site in areas as designated by Amerwest; and (iv) adequate security is provided for the Work to protect against trespassing, theft, vandalism, breakage and damage. Subcontractor shall not erect or place any signs or advertising of any kind on the Property. Amerwest reserves the right to require Subcontractor to relocate facilities, materials, and staging areas during the course of completing the Work of the Project. Any such relocation shall be at the expense of Subcontractor.
  - b. The Subcontractor shall field verify all field dimensions and shall be fully responsible for the accuracy of all dimensions. Subcontractor shall at his own expense, immediately upon entering the Property for purpose of beginning Work: (i) locate bench marks and general reference points and take such action as necessary to prevent their destruction; (ii) lay out his own Work and be responsible for lines, elevations, measurements of building and Work executed by him or others under the Subcontract. Subcontractor shall exercise proper precaution to verify figures shown on drawings before laying out Work and/or ordering materials and will be solely responsible for any error resulting from his failure to exercise such precaution.
6. Utilities; Office; Temporary Toilets; Hoisting Facilities; Shared Costs:  
If Amerwest has hoisting facilities on the Project, the Subcontractor may participate in the use these facilities provided a scheduled time and schedule of charge are agreed upon in writing in advance. In using these facilities, Amerwest shall have no liability for any injury, loss or damaged materials, equipment, persons or property. Subcontractor assumes all risk of use and agrees to indemnify, defend and hold harmless Amerwest from any and all claims related directly or indirectly to such use or participation.
7. O.S.H.A.; Job Safety:
- a. Subcontractor shall in performance of Work observe and comply with the Occupational Safety and Health Act (and with the standards and rules issued thereunder), and with all other federal, state, city, and local laws, ordinances, and regulations issued thereunder with respect to occupational safety and health, all as amended from time to time. Subcontractor shall have in his employment at least one employee who has received 10 hours minimum of O.S.H.A. classroom training; and if the Subcontract Sum herein is in excess of \$150,000 one trained employee must be directly assigned to supervise the Work under this Subcontract. Subcontractor shall certify to Amerwest the employment of such trained personnel.
  - b. Subcontractor covenants to develop, maintain, and sustain a safety program for his employees, sub-subcontractors, and other parties involved in the direct or indirect accomplishment of the Subcontract and/or the Work. Subcontractor covenants to maintain, provide, and/or require personal protection gear and to require employees and sub-subcontractors to use such gear. Subcontractor shall be required to conduct periodic safety meetings with all his employees and sub-subcontractors on the job site. Subcontractor shall be obligated to have key employees on the job site attend those safety meetings as are conducted by Amerwest.
  - c. Subcontractor shall be responsible as soon as is practical, but not later than 48 hours, to notify Amerwest of all incidents and accidents that happen on the Project or is a result of the Work. Subcontractor shall maintain records of such incidents and accidents in accordance with the current laws in effect pertaining to such obligations.
  - d. If during an O.S.H.A. inspection the operations of Subcontractor are fined, and resultantly Amerwest is fined, then Amerwest shall have the right to deduct from any remaining payment due subcontractor the amount of the fine; and such deduction shall be credited as a payment against the Subcontract Sum and/or any other amount owed to Subcontractor.
8. Architect's Inspections; As Built; Inspections; Cost Certifications:
- a. If the Architect's/Engineer(s) visit to the Property for Subcontractor's Work is other than routinely, such visits shall be at the expense of Subcontractor. Owner or Amerwest may deduct such expense from the Subcontract Sum

and/or any amount as might be due Subcontractor (e.g. reinspections, failure to perform, claims for concealed conditions that are later determined to be invalid, etc.).

- b. The cost of the Architect's time and expenses in preparing a Change Order shall be borne by the party who is adversely affected by the result of the Change Order (e.g. if Subcontract Sum is increased--Owner pays; if Subcontract Sum is lowered because of failure of Subcontractor--Subcontractor pay). Subcontractor is responsible to provide accurate and complete as-built drawings and other information necessary to document completion of the Work (to include any and all changes made in the field). Receipt by the Owner and Amerwest of said drawings and information shall be a condition precedent to Amerwest making final payment to Subcontractor.
- c. Subcontractors at any tier, equipment lessors, material suppliers, and manufacturers must certify both cost and payrolls, and deliver properly completed forms to both Amerwest and Architect, using HUD Forms or other required forms, as are directed, if HUD or other public or governmental financing is involved.

9. Workmanship; Work Protection:

- a. Subcontractor is responsible for the nature and quality of the Work. The workmanship shall be of the highest quality, in every respect, as usually recognized in the multifamily building industry. All surfaces, members, frames and units shall be true, even and in alignment. Connections shall be true, tight and neat.
- b. Subcontractor agrees to protect the Work from deterioration and/or damage until such time as Owner, Architect, and appropriate governmental authorities accept the Work. No additions to the Subcontract Sum will be made to repair damage, restore deterioration, or otherwise correct deficiencies in Subcontractor's Work.
- c. For areas of the Work and areas affected by the Work Subcontractor shall replace broken and scratched glass; remove stains, marks and dirt from decorated work; clean hardware; remove paint spots and smears from all surfaces; clean fixtures and glass surfaces; repair and/or replace damaged or disturbed work of others, either direct and indirect affected; and wash all concrete, tiles and poured floors. Access to work areas shall be limited after floor coverings are installed or F.F. &E. installation has commenced.
- d. The Subcontractor shall at all time keep the premises free from accumulations of waste material or rubbish caused by his employees, sub-subcontractors, suppliers, agents, independent sub-subcontractors, and/or accomplishment of the Work. To the maximum extent possible, Subcontractor shall keep the interior of any buildings free of combustible materials. Subcontractor shall be responsible for the removal of all refuse resulting from the completion of his Work. Subcontractor at its expense at not less than weekly intervals during the accomplishment of his Work shall organize and/or remove any surplus materials and rubbish from and about the premises and deposit in site waste receptacle supplies by Owner.
- e. All keys, manufacturer's instructions, etc. are to be collected by Subcontractor and shall be provided to Amerwest not later than Work completion. Subcontractor shall provide, collect and/or deliver to Amerwest all manufacturer and dealer warranties and guarantees on appliances, equipment, and materials classified as consumer products under public law.
- f. If Subcontractor shall not be in compliance with the above obligations and requirement of this paragraph then Amerwest may accomplish the actions on behalf of Subcontractor, backcharge Subcontractor for such activities including a 15% administrative markup, and deduct such backcharge from the Subcontract Sum and/or any other payment owed Subcontractor.

10. Delays; Claims; Change Orders:

- a. A work order issued on the job in the situation of an emergency must be approved in writing within 48 hours by Amerwest's Construction Manager or Project Superintendent. Written proof of such authorization is the issuance to Subcontractor of Amerwest's written Financial Control Number (FCN).
- b. No order, statement or conduct of Owner, Architect, or Amerwest shall be treated as a Change Order or shall entitle the Subcontractor to an equitable adjustment of the Subcontract Sum unless pre-approved in writing and a Financial Control Number ("FCN") is issued by Amerwest. Any such claim must be pre-approved through the Architect and/or Amerwest and thereafter a Change Order issued documenting such approval. Work started by Subcontractor prior to approval shall be deemed to have been included in the scope of Work and no extra shall be due thereon. Work started by Subcontractor prior to approval and issuance of the FCN shall be deemed to have been included in the scope of Work and no extra shall be due thereon.
- c. The Architect shall have the authority to issue a Change Order without Subcontractor's approval where Subcontractor fails to perform under the Subcontract; and Owner or Amerwest shall have the right to offset or backcharge the Subcontractor if other parties complete Work on behalf of Subcontractor.
- d. Notwithstanding anything contained herein to the contrary, if the Work or work for which the Subcontractor claims extra compensation is determined by the Owner, Owner's representatives or agents, or Architect to be such that the Amerwest is not entitled to additional compensation for such Work or work from the Owner, then the Subcontractor waives its right to a claim for extra compensation for such Work or work and releases Amerwest and Owner from liability for payment therefore; and denial in whole or part shall not be grounds for damages or costs recoverable by Subcontractor.
- e. The portion of any claim shall be deemed waived by Subcontractor for the entire periods prior to the written notice of claim. Notwithstanding anything to the contrary in this Agreement, Amerwest or Owner will not be held liable for and/or pay for any backcharges from Subcontractor.

11. Periodic Inspections; Quality of Work; Walk through and Punchlist:

- a. Subcontractor at its expense shall be responsible for scheduling, coordinating, and accomplishing all inspections, re-inspections, testing, re-testing, or approvals necessary for the completion of its Work. Subcontractor shall

provide and furnish to Amerwest and Architect copies of all inspections, testings, and reports. If the inspection is by an authority other than Amerwest or the Architect, the Subcontractor will arrange for such inspection and promptly advise Amerwest and Architect in advance in writing of the date fixed for such inspection. Work covered without notification and consent of Amerwest, Architect, and other appropriate inspecting authorities shall be uncovered for examination at the Subcontractor's expense.

- b. The Architect, Lender's inspector, and other Project inspectors have the authority to reject Work that does not conform to the Subcontract Documents or applicable codes, ordinances, regulations, or laws. The Subcontractor shall not be relieved from the responsibility of correcting errors in workmanship or materials, regardless of prior preliminary approval or acceptance or receipt of final payment.
- c. If inferior workmanship is employed the Work shall be re-accomplished to conform to the highest quality standards of the trades concerned. Any defects due to faulty materials or workmanship and any damage to other work shall be repaired or replaced by Subcontractor at no expense to the Owner or Amerwest. Should the Subcontractor cause damage to the Work or the work of any separate subcontractor on the Project, then Subcontractor shall be responsible for the repair and any damages, both direct and consequential.
- d. Prior to obtaining the final certificate of Substantial Completion from the Architect, Amerwest and Architect shall inspect the Work (or portions thereof) for deficiencies and defects in the construction workmanship. The parties involved in the inspection shall detail a list of deficiencies and defects (the "Punchlist"). Subcontractor shall be noticed of the inspection. Subcontractor shall be responsible within the Subcontract Sum to correct deficiencies and defects on the Punchlist that are assigned by Amerwest. Subcontractor shall immediately begin efforts and continue so as to complete the corrections of the assigned items within 5 days of receipt of the Punchlist. Amerwest reserves in its sole and arbitrary discretion five days after delivery of the Punchlist the right to make, either directly or through other, corrections to deficiencies and defects and to charge the Subcontractor the direct and indirect costs for completion of any punchlist items by Amerwest after the fifth day. Such amounts may be deducted from the Subcontract Sum and/or any other payments due Subcontractor.

12. Subcontract Sum:

- a. Subcontractor agrees that the Subcontract Sum, as may be modified from time to time by written agreement, is full consideration to Subcontractor for completion of responsibilities and obligations, be they either direct or indirect, on site or offsite the Property, known or unknown, and in any manner pertaining to the Subcontract, the completion of the Work (as is modified in writing from time to time), and/or Subcontract Documents. Subcontractor within the Subcontract Sum shall be fully responsible and perform any and all tasks and/or take all actions and/or furnish and provide all means and necessities, either direct or indirect, to complete the Work and the coordination thereof.
- b. As a portion of this Subcontract and Subcontract Sum, Subcontractor agrees to do whatever is necessary to insure that it will properly support and sustain the Work and the Project. It is within the intent of this Subcontract, the Subcontractor's responsibilities, and the scope of Work within the Subcontract Sum is to provide the Owner with a complete, fully operable, and functioning Project in full compliance with applicable building codes and all city, state, local, and federal codes, regulations, ordinances, and laws. The scope of the Work as is described in the Subcontract Documents does not eliminate any requirement or the supplying of any item or equipment necessary for completion of the Work. In the case of an inconsistency between Drawings and Specifications or within the Subcontract Documents not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.
- c. The Subcontract Sum for the Work, and the unit, labor, material, etc. prices therein, will be held for the duration of the Subcontract, which term shall be the length of the Project.
- d. Within the Subcontract Sum Subcontractor shall be responsible for all taxes in whatever form, be they past, present, or future, pertaining to the Work. Such taxes shall include, without limitation, all sales, use, cities, local and federal taxes, excise taxes, service taxes, consumer, value added, and any and all similar taxes now or hereafter imposed. Subcontractor shall at its expense obtain and be responsible for all required permits, licenses, tap fees, hookup fees, construction fees, meter fees, meters, flow controls, metering devices, etc., as are necessary or required for the Work. Any requirements for approval, construction, use, occupancy or permanent changes to the scope of Work are the Subcontractor's expense and responsibility. Subcontractor shall furnish and provide to Amerwest copies of all building permits as necessary for the completion of Subcontractor's Work.
- e. Subcontractor shall be responsible, at its expense and within the Subcontract Sum, to work overtime or extra shifts, to provide adequate manpower, and pay any and all other expenses and costs as are necessary to meet and/or maintain the Progress Schedule. Subcontractor shall not be entitled to a Subcontract Sum increase or extension of time based upon ambiguities in Subcontract Documents or a lack of knowledge of the existing site conditions or work of others.
- f. The Parties have negotiated a breakdown of the Subcontract Sum into various line items, categories, and/or milestones. Such breakdown shall be recorded on a 'Schedule of Values' attached as Exhibit C. Such a breakdown is not meant to limit, change, or modify the scope of Work or Subcontractor's responsibilities or obligations within the Subcontract. Rather, it is the intent of the Parties to break down the Work and Subcontractor's obligations and responsibilities into smaller thresholds so both Parties can monitor Subcontractor's progress toward completion. It is the intent of the Parties that the completion of the line items, categories, and/or milestones within this Schedule of Values shall be the basis for Subcontractor submitting Applications for Payment and receiving interim payments. The 100% completion of all of the Work and Subcontractor's responsibilities and obligations shall be the basis for Subcontractor submitting the Final Application for Payment.
- g. If the Prime Contract has a provision for liquidated or other damages against Amerwest, or other such provisions for damages, and such damages are assessed, Amerwest may assess a share of the damages against the

Subcontractor in proportions to the Subcontractor's share of the responsibility for the assessment; and such assessment shall be offset against and reduce the Subcontract Sum and any amount as is owed Subcontractor.

- h. Payments due and unpaid under the Subcontract Documents shall bear interest from the date payment is due at the construction loan annual rate plus one (1%) percent, calculated for any portion of the month of a default or late payment.

13. Methods for Subcontract Sum Adjustments:

- a. Provided Subcontractor receives a written order signed by Amerwest or Architect and if the Subcontractor is directed in writing to expand or limit the scope of his Work then the Subcontractor shall promptly proceed with the modified Work involved.
- b. If no other method for adjustment is agreed upon, the addition or deduction to Subcontract Sum for such modified Work shall then be determined by the Architect on the basis of the reasonable expenditures and/or savings of those performing the Work attributable to the change. In such case, the Subcontractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order.
- c. Adjustments in compensation related to the modified Work shall include the following:
  - 1. direct costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom but limited to fifteen (15%) percent of the direct cost of labor; and
  - 2. direct costs of material, supplies and equipment, including cost of taxes in any form, transportation, storage, insurance, and handling, whether incorporated or consumed; and
  - 3. fair market rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Subcontractor or others, if any; and
  - 4. direct costs of premiums for all extra bonds and insurance, permit fees, and sales, use or similar taxes, if any; and
  - 5. eight (8%) percent allowance for overhead, site conditions, supervision, other general conditions, and profit.

14. Progress Schedule:

- a. Subcontractor acknowledges and agrees that Amerwest shall maintain and has the authority to modify where necessary, in its sole discretion, the Progress Schedule for the Project. The Work shall be accomplished by Subcontractor in accordance with the Progress Schedule which schedule shall indicate general intent and order of sequence, but does not have to incorporate complete and specific construction details and procedures.
- b. Once Work has commenced Subcontractor has the responsibility in a continuing and diligent manner of accomplishing and completing the Work. The Subcontractor shall be responsible to carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Subcontract Time and Subcontract Sum. Upon request Subcontractor shall furnish such evidence as Amerwest may require concerning Subcontractor's ability to perform this Subcontract in the manner and time specified. Subcontractor shall have the obligation to maintain at the Project an up-to-date copy of its Work Schedule.
- c. If the Work cannot be completed within the Subcontract time, or if the Progress Schedule has not been properly observed by Subcontractor, the Owner or Amerwest may negotiate with Subcontractor for a portion of the Work to be accomplished by other subcontractors. If Subcontractor shall agree to a modification to the scope of Work and the deduction from the Subcontract Sum for the modification, then Subcontractor will not be held to be in default as to that portion of the Work accomplished by other subcontractors. If Subcontractor shall not agree to a modification to the scope of Work, then Subcontractor may, in the sole discretion of Amerwest, be held to be in default of the Subcontract; and, if no agreement has been reached within the period of the first notice, then Amerwest may in its sole discretion immediately deliver the second notice of default to Subcontractor.
- d. If Subcontractor cannot or will not maintain the Progress Schedule, Amerwest or Owner may withhold a portion of the progress payments until a revised schedule, demonstrating Subcontractor's ability to complete the Work within the Subcontract Time and Subcontract Sum, has been submitted and reasonably approved by Amerwest. Such withholding of all or a portion of a payment due Subcontractor shall not be the basis for a claim for damage or extension of time by Subcontractor nor be a reason for Subcontractor to discontinue completion of the Work. The withholding of this progress payment or portion thereof shall not change any of the other obligations hereunder and shall not be a breach of the Subcontract by Owner or Amerwest.

15. Request for Payment; Stored Materials; Waiver and Release of Lien:

- a. On or before the application date established in the Subcontract the Subcontractor must submit to Amerwest in duplicate an itemized Application for Payment. The Application shall be accomplished monthly indicating on the Schedule of Value form (Exhibit C) those thresholds of Work for which payment is being requested. The Application for Payment must include the retainage deduction, be signed and notarized, and support the Subcontractor's right to payment, all as the Owner, Amerwest, Owner's construction lender, and/or the Architect may reasonably require.
- b. The Application for Payment may only be submitted for Work verified to have been completed as either: (i) completed milestones; or (ii) completed unit cost items; or (iii) percentage completed of each breakdown line item category. Where the Schedules of Values has been negotiated based upon completed milestones or unit cost items, Subcontractor shall not include in an Application for Payment any milestone items or unit cost items that have not been 100% completed at or before the date of the Application for Payment. Unless negotiated to the contrary, the Schedule of Values for each Application for Payment shall be submitted based upon completed milestones and/or unit price items and not percentage completed.

- c. It has been negotiated between the Parties that a completed Exhibit C-Sub as submitted with the Application for Payment shall be deemed the Subcontractor's invoice. In the situation of a dispute as to what has been completed (or not) the Parties agree that the Architect and/or Lender's inspector, in their sole discretion, shall be the final authority to determine what may or may not be included in an Application for Payment and therefore invoiced. It is agreed between the Parties that where the Architect or Lender's inspector certifies a different level of completion than is submitted, then Subcontractor's Application for Payment and invoice shall be deemed to be automatically modified to include only the milestones, unit price items, or percentages completed as are approved by the Architect and/or Lender's inspector.
- d. Subcontractor, through its Affiant, must furnish an Affidavit Waiver and Release of Lien certified through the date of the Application for Payment as a condition precedent to receiving any payments. Unless Subcontractor restricts in writing approved 'Affiants' to being specific employees, officers, partners, individuals, etc. then execution of an Affidavit Waiver and Release of Lien by any person with the apparent authority shall be binding upon Subcontractor. No Application for Payment shall be considered fully submitted or payment due thereunder until the Subcontractor delivers to the Owner and Amerwest properly executed unconditional waivers of lien for the immediately prior Application for Payment from every subcontractor, sub-subcontractor, materialman, and supplier for which the Subcontractor had sought payment. The Subcontractor also agrees to deliver to the Architect and Amerwest all such receipts as the Architect may reasonably request evidencing payment by the Subcontractor for materials, equipment, labor or any other charges or debts that could result in the levy of any lien(s) against the Project.
- e. The forms for the Affidavit Waiver and Release of Lien to be signed by the Subcontractor, and its sub-subcontractors, suppliers, and materialmen are attached to the Subcontract as Exhibits "D". Amerwest, the Owner, Lender, and/or the Title Company may designate, change, or modify the form of the lien waiver during the term of the Subcontract.
- f. All requests for stored materials' must be pre-approved by the Owner and Amerwest. Materials shall not be stored off Property unless specifically approved by Owner, Lender, and Amerwest in writing (and then only for the time specifically approved). Any insurance, storage costs, bonded warehouse costs, handling, transportation, etc. for stored materials are at Subcontractor's expense and are deemed to be included in the Subcontract Sum. Subcontractor shall be responsible to arrange for and provide insurance on all materials, equipment, and supplies prior to arrival on the Property.
- g. Subcontractor's acceptance of final payment less retainage shall constitute by the Subcontractor a full and final waiver of any and all claims or causes of action related to the Work or to Subcontractor's connection to the Project or Contract Documents. Acceptance of the final payment shall in no way relieve the Subcontractor of liability for the obligation for completing or replacing faulty or defective Work appearing after the final payment
- h. Retainage shall be retained on all interim payments to Subcontractor. Retainage will be released and paid to Subcontractor within 10 days of: i) completion and acceptance of the Work by the Owner, Architect, Lender, and Amerwest and ii) upon payment to Amerwest of that portion of the retainage is as applicable to Subcontractor's Work. Subcontractor agrees to enter a Retainage Release Agreement satisfactory to Amerwest and Owner if retainage is paid to Subcontractor prior to the Architect's certification of Substantial Completion of the Project.

16. Progress Payments; Joint and/or Multiple Party Checks:

- a. After the Architect, Lender's inspector, HUD inspectors, and Owner have reviewed and approved an Application for Payment Amerwest shall make payment to the Subcontractor within five working days of receipt from the Owner of good funds as are applicable to Subcontractor's Work. Amerwest's obligation to make any payments due under this Subcontract (including retainage) is expressly contingent upon Amerwest's receipt of cleared funds from the Owner in payment of the sums due under the Subcontract between Amerwest and Subcontractor on account of the Work performed by Subcontractor under the Subcontract. The Amerwest shall be relieved from any payment obligations to Subcontractor under this Subcontract until such corresponding payment for Subcontractor's Application for Payment is received from Owner.
- b. Either Owner and/or Amerwest, in their sole discretion, shall have the right at any time to issue direct, joint, or multiple party checks in payment to Subcontractor, Subcontractor's sub-subcontractors, suppliers, and/or materialmen performing any portion of the Work or accomplishing Subcontractor's obligations or responsibilities. Subcontractor agrees that issuance of such direct, joint, or multiple party checks shall be deemed payment to the Subcontractor for the full amount as is issued. Such checks in the amount issued shall be offset and deducted from any amount due to Subcontractor including but not limited to the Subcontract Sum and/or any amount owed to Subcontractor. Subcontractor waives any right to receive prior notice of Owner or Amerwest's intention to pay any party as is reserved herein.
- c. If Subcontractor shall make an assignment of any of its payment rights, then all payments as are assigned shall be made by a joint party check issued to Subcontractor and Assignee. The issuance of a joint party check to Subcontractor and Assignee shall be deemed payment against amounts owed to Subcontractor. Amerwest and Owner specifically reserve the right in situation of assignment of Subcontractor's payment rights to pay by direct, single party check the Subcontractor's sub-subcontractors, materialmen, suppliers, and/or parties having a lien right against the Property. Such checks in the amount issued shall be offset and deducted from any amount due to Subcontractor including but not limited to the Subcontract Sum. Subcontractor waives any right to receive prior notice of Owner or Amerwest's intention to pay any party as is reserved herein.

- d. Before receiving any payment on a HUD or other public or governmentally financed project, the Subcontractor shall submit evidence satisfactory to the Owner and Amerwest that Form HUD-2554 obligations, all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. For all projects it shall be Subcontractor's responsibility to collect lien waivers from the sub-subcontractors of its subcontractors at all tiers (or their sub-subcontractors or any level below the primary level of subcontracts) and upon request to provide it to Amerwest prior to payment.
- e. In the event Amerwest receives notice of a lien claim or bond claim by Subcontractor's materialmen, subcontractor or laborer, Amerwest may, at Amerwest's option, directly pay any such claimant. Any such direct payment to a claimant and any expenses in processing such claim and payment shall be deducted from the Subcontract Sum and/or from payments otherwise due Subcontractor. Subcontractor and Amerwest further agree that Amerwest will incur substantial additional costs and expenses in administration of claims when a notice is received, that such costs would be difficult to ascertain, that the sum of \$350.00 would be a reasonable and just compensation to Amerwest for each notice received; and that \$350.00 for each notice should be deducted from the Subcontract Sum and/or from any payments due to Subcontractor, as liquidated damages for each such administration.
- f. Should Subcontractor assign all or a portion of any monies due or to become due under this Agreement so as to create a security interest, or should there be an assignment for any other purposes, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to Subcontractor shall be subject to the claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Subcontract and Work and that such assignee shall be required to execute and deliver a full release upon receipt of payment made pursuant to such an assignment.

17. Construction Loan; Approvals of Subcontractors:

- a. This Subcontract is subject to the construction loans being in place and/or funds available to Owner for disbursement. Subcontractor shall fully cooperate with any such construction lender and provide such information and documentation as may be reasonably required by such construction lender and any title company. Subcontractor shall comply with all requirements of Lender and the Owner's Title Company for submitting Application of Payments and for receiving Progress Payments and the Final Payment under the Subcontract.
- b. Owner and Lender shall have the right to disapprove any subcontractor or subcontract. All subcontracts shall be assignable to Owner and its Lender and may be assumed by Owner or its Lender in the event of any termination of the Contract between Owner and Amerwest, all at the option of Owner and/or its Lender. Owner and Owner's Lender shall be recognized as third party beneficiaries under the Subcontract and sub-subcontracts. Subcontractor agrees to execute such agreement as the Owner or Lender may reasonably require so as to be binding for Subcontractor to continue and complete performance. This Subcontract is terminable by Owner and/or its Lender all without additional compensation beyond that portion of the Subcontract Sum for the Work actually completed through the date of termination.

18. Hazardous Materials:

- a. Subcontractor has examined the Property and the improvements thereon to its full satisfaction and has determined that the Property and the improvements are presently free from all contamination by hazardous or toxic materials. Subcontractor represents and warrants to Owner and Amerwest that the Work shall be free from all contamination by hazardous wastes or other hazardous or toxic materials of any kind, including, without limitation, asbestos, PCB's and other toxic or hazardous chemicals or materials.
- b. In the event the Subcontractor or any sub-subcontractors utilize any hazardous materials in the course of construction of the Work, Subcontractor agrees to exercise extreme care in the handling and storage of such materials. Subcontractor shall be fully responsible for all loss, damage, cost and expense incurred by Owner and Amerwest from any contamination of the Project or improvements thereon by hazardous or toxic materials arising from, or in connection with the Work. Subcontractor agrees to notify Owner, Amerwest and Architect immediately in the event of any contamination by hazardous or toxic materials.
- c. Subcontractor must obtain, maintain, and display MSDS's for all products of the Work that contain hazardous chemicals and/or materials. Subcontractor must provide training to his employees and any sub-subcontractors' employees, materialman, suppliers, etc. on the MSDS provisions, dangers, recommendations, and requirements. Subcontractor shall provide copies of any such MSDS's to Amerwest for collection and display in the Job Site Trailer.
- d. This Subcontractor shall defend, hold harmless, and indemnify the Owner, Amerwest, and his agents, and all other Subcontractors on the Project from damages, actions, claims, suits, judgments, costs, expenses, or fines as a result of his operations.
- e. Notwithstanding anything to the contrary in the Subcontract Documents Amerwest's indemnity to Subcontractor for hazardous materials exposure caused by others is specifically limited to the value of any insurance settlements in favor of Amerwest that are the direct result of Subcontractor's successful claims against others for such hazardous material exposure.

19. Insurance:

- a. The Subcontractor shall not receive payments under this Subcontract until he has obtained (and maintains thereafter) all the insurance required by the Subcontract Documents. Such insurance must be at least equal to the limits set forth herein, from an insurance company acceptable to the Owner, Amerwest, and Lender (including those requiring higher limits and lower deductibles) and written by a carrier with a current Best's Insurance Guide Rating of "A" Best or better (which carrier must be authorized to do business in the State of Missouri and the state

- of the Project). All policies shall provide for thirty days' written notice to the Owner and Amerwest prior to effective date of any changes affecting the policy. All insurance carried by Subcontractor shall be broad and occurrence form, and shall provide that it is primary, regardless of whether Owner has collectible or collateral insurance. The Subcontractor shall not allow any sub-subcontractor to commence Work as a part of this Subcontract until the sub-subcontractor has obtained insurance coverage.
- b. The Subcontractor shall provide to the Amerwest and Owners original Certificates of Insurance naming as additional insured required parties and including a waiver of subrogation, all as are detailed on Exhibit F attached hereto.
  - c. Subcontractor's minimum coverage requirements:
    - 1. Comprehensive General Liability Insurance, including but not limited to coverage for products and completed operations, independent contractors, premise and operations, bodily injury, personal injury, contractual liability and "X", "C" and "U" perils. Such policies shall protect against all claims for bodily injury, including wrongful death, as well as all claims for property damage, with the following minimum limits: bodily injury and property damage of \$1,000,000 per occurrence / \$2,000,000 general aggregate; and \$1,000,000 products completed operations aggregate; and fire damage (each occurrence) \$50,000. The Commercial General Liability Policy shall contain a contractual liability endorsement, an endorsement listing the Amerwest as additional insured, and a products/completed operations endorsement. 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. The General Liability Policy shall contain an endorsement listing Amerwest and Owner as additionally insured.
    - 2. Comprehensive Automobile Liability Insurance covering all vehicles owned, non-owned and hired and such policies shall protect against all claims for bodily injury, including wrongful death, as well as all claims for property damage, with the following minimum limits: \$500,000 per accident for bodily injury and \$200,000 for property damage. The Business Automobile Liability Policy shall contain an endorsement listing Amerwest and Owner as additionally insured.
    - 3. Workmen's compensation and employer's liability insurance (with a broad form hold harmless agreement) for the protection of his employees as required by law with limits of not less than required by the state of the Project. Where state law allows exemptions (e.g. sole proprietor, small partnership. etc.), or where Subcontractor's coverage lapses during the execution of his Subcontract obligations, then Subcontractor acknowledges and agrees that such workmen's compensation insurance shall be provided by Amerwest under its insurance coverage with the cost of any such insurance coverage to be deducted from the Subcontract Sum. The Workers' Compensation Policy shall contain a waiver of subrogation endorsement in favor of Amerwest and its employees. Subcontractor where requested shall execute a joint agreement to be filed with the Workers' Compensation Commission stating the Subcontractor is an independent contractor.
    - 4. If Subcontractor subcontracts any portion of the Subcontract Work, Subcontractor shall deliver to Amerwest for each of Subcontractor's subcontractors or employee leasing companies, an original Accord Certificate of Insurance that evidences the same coverage and endorsements for workers' compensation insurance as required herein. Upon request from Amerwest, Subcontractor shall deliver a copy of all policies of insurance required herein.
    - 5. Subcontractor shall be solely responsible for insuring Subcontractor's equipment against physical loss or damage of any kind.
  - d. The Builder's Risk property insurance maintained by Owner shall not be required to cover portions of the Work, equipment or materials stored off the Property unless: (i) Subcontractor first obtains the written approval of Owner and Owner's insurer and (ii) Subcontractor complies with all of Owner's insurer's requirements with respect to the storage, transportation and security of such Work, equipment or materials.
  - e. Subcontractor shall bear the risk of all loss or damage to any such portions of the Work for which Subcontractor does not comply with the requirements of Owner's insurer. Subcontractor shall bear all risk of loss for any losses up to the value of the deductible within Owner's Builder's Risk Policy. Subcontractor waives any claims against Amerwest and Owner, any of their employees, officers, director, or agents, for any and all losses, injury, damages, or expenses that are covered any policies of insurance, except as to rights Subcontractor might have to the proceeds of such insurance.

20. Notices; Certificates of Good Standing:

- a. Subcontractor shall provide Amerwest with a "Statement of Good Standing" or other similar evidence from the state in which they are registered and/or incorporated. Subcontractor shall provide proof that Subcontractor is authorized to conduct business in the state of the Project. Subcontractor shall provide a copy of its professional license for the state of the Project. Subcontractor shall provide a list of names, addresses and current telephone numbers of all sub-subcontractors, materialmen, and suppliers used for construction and services of the Work.
- b. All notices to the Parties shall be in writing and shall either be by hand delivery, delivered via certified mail, delivered by telegram, delivered by overnight carrier, or transmitted by fax; and in all cases directed to the Parties at the addresses and phone numbers shown on the Subcontract or on the business card of the Subcontractor. Mailed notices will be effective two (2) business days after mailing. All other notices shall be effective upon delivery or faxing to the recipient's address and/or phone number. Addresses and phone numbers may be changed by notice to the other Parties, such notice to be effective only upon receipt.
- c. In the situation of an emergency as declared in the sole discretion of Amerwest, a notice may be oral; but such notice must be followed up in writing by Amerwest within the shortest time possible but not to exceed 48 hours.



21. Liens; Indemnity:

- a. Amerwest and Owner shall not be liable to Subcontractor, and Subcontractor hereby waives and release Amerwest and Owner, from all claims and causes of action for delays, demobilization, remobilization, damage, hindrances, or interruptions of the Work and/or Subcontractor due to any cause whatsoever, including, without limitation, the act, neglect or default of Amerwest, Owner, or Architect and/or caused by the act, neglect, or default of Amerwest, Owner, or Owner's or Amerwest's representatives or agents, or by reason of fire or other casualty, or on account of riot or strikes, or on account of any act of God, or any and all causes beyond Amerwest's or Owner's control, or any circumstances caused or contributed to by any subcontractor or any other party performing a part of the operations or Work or work at the Project. Should Subcontractor be delayed in the execution of Work then Subcontractor's sole remedy shall be to request in writing an extension of time equal to the delay.
- b. The Owner and Amerwest each shall have the right to offset and deduct any backcharges, claims, and expenses against the Subcontract Sum and/or any payments due Subcontractor. Such deductions and offsets shall be deemed payment of a portion of the Subcontract Sum or other amounts owed Subcontractor, all as shall be specified by Amerwest in its sole discretion.
- c. Subcontractor hereby agrees to indemnify, defend, and hold harmless the Owner and Amerwest, their employees, agents, officers, and directors from and against all loss, cost, damages, liability and expense which Amerwest, Owner, or their employees, agents, officers, and/or directors may suffer or incur (including reasonable attorney fees and court costs) by reason of the filing by Subcontractor (or any party performing or involved in Subcontractor's Work) of a claim of lien on account of the Work for which payment has been made, or deemed paid, or deducted and offset per the terms of the Subcontract Documents, and/or for which payment is not delinquent and/or due at the time the lien was filed.
- d. The Subcontractor agrees to protect, defend, indemnify, and save and hold harmless the Amerwest, and upon request will assume the defense of the Owner, Amerwest, and all of their employees, officers, directors, members, agents, and assigns (the "Indemnified Parties") from and against all claims, costs, damages, losses and expenses including but not limited to i) attorney fees, ii) bodily injury, sickness, disease or death of any person or employee, or iii) any injury or damage to property arising out or, related to, or connected with, either directly or indirectly, the performance, or failure in performance, of the Subcontractor or Subcontractor's Work under this Agreement, be it on or off the Property, anticipated or unanticipated, of any nature or kind, even if any claim, damage, loss or expense is caused in whole or in part by a negligent act or omission of the Indemnified Party. The expressed intention of the Parties is that the Subcontractor's indemnity herein will survive the termination of this Agreement and will indemnify and protect the Indemnified Parties from the consequences of their own negligence.
- e. Subcontractor agrees to look solely to Subcontractor's lien rights under the applicable mechanic's lien statute in enforcing any rights that Subcontractor may now or hereafter have against Amerwest or Owner. Subcontractor hereby expressly waives any right to claim an equitable lien against the Project or any construction loan funds held by Lender, Owner, or Amerwest. Subcontractor agrees to look solely to Owner and/or Amerwest's interest in the Project for satisfaction of any claims of Subcontractor. No assets of Owner or Amerwest shall be subject to levy, execution, or judicial process for the satisfaction of Subcontractor's claims. In any and all claims against an Indemnified Party by an employee of the Subcontractor, or anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation or bar under the Workers' Compensation Act, or other employee benefit acts. This Subcontractor shall defend, hold harmless, and indemnify the Owner, Amerwest, and his agents from damages, actions, claims, suits, judgments, costs, expenses, or fines as a result of Subcontractor's operations or in any other way related to Subcontractors performance under the Subcontract, be it on or off the Property.

22. Failure to Perform; Emergency Repairs; Default; Cancellation; Liquidated Damages; Remobilization Fee:

- a. In the situation of an emergency, as declared by either by Owner or Amerwest in their sole and arbitrary discretion, repairs or corrections shall be immediately accomplished as are necessary to preserve the Work and/or Project. If Subcontractor shall not immediately or is not immediately available to respond so as to correct the emergency situation then Amerwest or Owner shall have the right to make all the repairs and take all actions as are necessary to stabilize the adverse situation; and any direct and/or indirect costs shall be the responsibility of the Subcontractor as it shall be applicable to the Work for his Subcontract.
- b. The following shall be deemed a condition of default by Subcontractor: (i) defective or deficient Work not remedied within time and/or manner allowed within a notice; (ii) improper or fraudulent liens at or from any tier of Subcontractor filed or threatened against the Project; (iii) failure of the Subcontractor to make proper payments to other parties performing the Work of its Subcontract; (iv) failure of the Subcontractor to properly submit, complete, detail, and verify Applications for Payment in such form and content as Owner, Owner's Lender, HUD, or Amerwest may require; (v) failure to submit lien waivers and releases verifying payments; (vi) reasonable evidence that the Work or any portion thereof cannot be completed within the unpaid balance of the Subcontract Sum or cannot be completed on or before the required date for completion; (vii) failure of Subcontractor to otherwise carry out the Work in accordance with this Subcontract or the Progress Schedule; (viii) failure of the Subcontractor to adequately man the Project so as to be able to complete Work per the Progress Schedule; (ix) Subcontractor's failure to respond to a notice and/or failure to proceed diligently to accomplish and/or complete such defects or deficiencies as are identified in a notice within the time allowed; (x) a default as described in paragraph 14.c herein; and/or (xi) Subcontractor's filing of a petition for bankruptcy, or the filing of a petition against Subcontractor, or if a receiver is appointed for Subcontractor, or an assignment of Subcontractor's assets for creditor's benefits, or Subcontractors involvement in insolvency proceeding.

- c. In the situation of Subcontractor's declared default Amerwest or Owner shall notice Subcontractor of the condition of the default and the expected remedy and time allowed for correction completion. Subcontractor must after receipt of this initial written notice ("first notice") from Amerwest within three (3) days commence and continue with diligence and promptness the correction of the condition of default or deficiency so as to have corrected the default or deficiency within the time allowed within the notice. In the situation that Subcontractor shall not commence the correction within 3 days of the first notice, or where the remedy shall not be accomplished as directed within the time specified, then the Owner or Amerwest may, upon a second two (2) day notice of the correction of default or deficiency not being fully accomplished to the satisfaction of Amerwest, engage another party to complete all or a portion of Subcontractor's Work. At the beginning of the third day after the date of second notice where Subcontractor has not fully complied with the conditions of the notices, Amerwest, or its assigned, may take possession of all materials, tools, supplies, and equipment of Subcontractor's on the Property. In such situation Subcontractor may not enter the Property or accomplish any further portion of the Work without the specific instructions of Amerwest and Architect. The cost to complete the Work, or portions thereof, as accomplished by others, plus a ten (10%) percent administrative charge, shall be deducted from any money due or to become due Subcontractor. After final completion and acceptance of the Work by Architect and Owner any remaining balance of the Subcontract Sum and/or any amount due to Subcontractor, after deducting offsets and backcharges, shall be paid to Subcontractor. If there are costs or expenses in excess of what remains to be paid Subcontractor from the Subcontract Sum and other amounts due Subcontractor, Subcontractor shall pay Amerwest on demand, together with the highest lawful rate until paid, any cost overruns.
- d. If Owner or Amerwest should materially and adversely breach this Subcontract, wrongfully terminate the Subcontractor under the Subcontract, or otherwise be found in violation of the Subcontract then the Subcontractor may seven (7) days' after written notice to the Architect, Owner and Amerwest of the definite and ascertainable nature of the breach, which correction of the breach has not commenced within the 7 days after notice (the "Owner's and/or Amerwest's Default"), terminate this Subcontract and recover from the Owner and Amerwest: (i) that unpaid portion of the Subcontract Sum for the Work as certified by the Architect to have been completed to the date of notice (inclusive of retainage) plus (ii) the Liquidated Damage Fee. Such Liquidated Damage Fee shall be equal to smaller of: (i) one and one-half (1.5%) percent of the cumulative amount of the progress payments approved for the Work certified as being completed to date of notification or (ii) \$3,500. It is the intent of the Parties that the Liquidated Damage Fee shall be the total compensation due Subcontractor from any arbitrary or improper cancellation, termination or breach, it being difficult (if not impossible) to ascertain the actual damages, costs, and/or expenses of Subcontractor.
- e. In the situation of Owner's and/Amerwest's default and if Subcontractor elects not to terminate the Subcontract and resumes the Work then Subcontractor shall be entitled to a remobilization fee (the "Remobilization Fee") as its sole and total remedy. The Remobilization Fee shall be the smaller of: (i) one and one-quarter (1.25%) percent of the cumulative amount of the progress payments approved for the Work certified as being completed to date of notification, or (ii) \$500. Such Remobilization Fee shall be paid as an extra to the Subcontract Sum at the next Payment Request. It is the intent of the Parties that the Remobilization Fee shall be the total compensation due Subcontractor, it being difficult (if not impossible) to ascertain the actual damages, costs, and/or expenses of Subcontractor.
- f. The Owner and/or Owner's Lender have reserved the right to cancel at any time any or the entire unfinished portion of the Work without penalty or additional compensation to Subcontractor beyond that portion of the Subcontract Sum for the Work actually completed through the date of termination.
- g. No waiver of a default or breach of any provision of this Subcontract shall be deemed a waiver of another or subsequent default or breach. No waiver by Amerwest or Owner shall be effective unless in writing. If Amerwest and/or Owner and Subcontractor shall have other agreements, default by Subcontractor under any one agreement shall be the basis for Amerwest and/or Owner declaring default under any or all other agreement(s) with Subcontractor.
- h. Upon any termination or cancellation of the Subcontract, or at such earlier time as requested by Amerwest, Owner or Owner's Lender, Subcontractor will transfer all building and other permits for the Project held by Subcontractor to Amerwest or Owner, regardless of whether Owner or Amerwest has defaulted under the Subcontract.
- i. In consideration of payments made under this Subcontract, upon termination, cancellation, or otherwise completion of the Subcontract, Subcontractor's indemnities within paragraph 21 shall continue in full force and effect for the benefit of the Indemnified Parties.

23. Mediation & Arbitration:

- a. Notwithstanding any contrary provisions herein (or anything to the contrary contained elsewhere in the Subcontract Documents), neither Owner or Amerwest shall be required to submit any dispute to mediation or arbitration unless Owner or Amerwest specifically agrees in writing to submit such dispute to mediation or arbitration; and such submission shall apply only to the particular dispute described in writing and signed by Owner or Amerwest. During the pendency of any dispute, litigation, mediation, or arbitration, Subcontractor, only with and within Owner and Amerwest's written directions which directions may withhold approval for continuing, shall carry on the Work and maintain the Work Progress Schedule notwithstanding the pendency of any such dispute, litigation, mediation, or arbitration proceeding. In the event of any litigation between Owner or Amerwest and Subcontractor under the Subcontract Documents, the prevailing party shall be entitled to reasonable attorneys' fees and costs at all trial and appellate levels.
- b. Except as is otherwise provided herein, all claims, disputes and controversies arising out of or relating to this Agreement, including claims for extra work or changed conditions to or related to the Work, shall be decided by

arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, except to the extent such rules are limited or modified herein. Discovery shall be conducted and shall be governed by the Missouri Rules of Civil Procedure, unless the parties agree otherwise. The claimant, whether the Amerwest or Subcontractor, shall give the other party written notice of arbitration by certified mail, specifying the amount of the claim and the basis for the claim. The arbitrator shall be a neutral arbitrator approved by the American Arbitration Association for conducting arbitrations in Missouri, and shall be selected by the Amerwest within ten (10) business days after the written notice of arbitration. After selection of the arbitrator, the Amerwest and the Subcontractor shall each tender to the arbitrator, one-half of the arbitration fee as determined by the arbitrator. The arbitration proceeding shall be commenced, and the arbitration hearing shall be scheduled, only after the claimant giving notice of the arbitration, has tendered its one-half of the arbitration fee to the arbitrator. The arbitration hearing shall be in St. Louis County, Missouri. The award rendered by the arbitration shall be final, and judgment may be entered upon the award in accordance with the Missouri Arbitration Act. If the arbitrability of this Agreement is contested by either party, the issue shall be submitted to a court of competent jurisdiction in St. Louis County, Missouri, and the arbitration shall be stayed until the determination by the Court.

24. Warranty: Subcontractor as a condition and in consideration of the final payment within the Subcontract

It is agreed and negotiated that as a portion of the Subcontract Sum the Subcontractor shall provide a warranty generally detailed herein for the Work (the "Warranty"):

The period of the Warranty shall begin upon full occupancy of the Work and shall continue for one year or the period as is statutorily required for the Work, whichever is the longer. Should a portion of the Work be occupied prior to Substantial Completion of the full Project then the period for warranty shall be for 15 months from first occupancy of the portion, or one full year after full occupancy of the Project, whichever is the longer. The Warranty includes but is not limited to (and incorporates herein by reference) all statutory warranties as are required of the state or local authorities in which the Work was completed. Such Warranty shall include an implied warranty of merchantability and fitness for a particular purpose. In all cases and for any cause, the Subcontractor warrants the Work for the purpose for which the Work was designed or intended. The Subcontractor warrants that all Work will be free from contamination by hazardous wastes or other hazardous or toxic materials of any kind, including but not limited to asbestos, PCB's and other toxic or hazardous chemicals and materials. The Subcontractor warrants that all labor, material and supplies furnished and the Work completed pursuant to this Subcontract was new, of good quality, free from faults and defects and in conformance with this Subcontract and Subcontract Documents. The Subcontractor warrants that within 72 hours of notice, either oral or written, that it will diligently and continuously pursue until corrected any and all necessary repairs or replacements of defects or deficiencies in its Work. Subcontractor agrees that in a case of emergencies, which emergency may be declared by Owner or Amerwest in its sole discretion (which discretion shall not be arbitrary), that the Subcontractor, within 24 hours of notice, either oral or written, shall diligently and continuously pursue any and all necessary repairs or replacements of defects until corrected. Subcontractor warrants all at its sole expense that it will restore to their prior state all primary and collateral conditions, both surface and subsurface, as are disturbed during the accomplishment of the Warranty, all is acceptable to Amerwest and Owner. Subcontractor warrants that any Warranty Work shall functions and performs for the purpose contemplated, designed and intended. The Subcontractor agrees that if, upon the notice by Owner, it fails to diligently pursue the correction of any deficiency or defect in a continuous and expeditious manner until completion, then Owner and/or Amerwest may, in their sole discretion, act to have such deficiencies or defects corrected at Subcontractor's expense; and that such efforts shall not invalidate any conditions of Subcontractor's Warranty or invalidate the ongoing Warranty obligations of Subcontractor herein. Subcontractor, at its sole expense, shall be responsible financially, and shall reimburse and indemnify and hold harmless Owner and Amerwest from any such claims or costs associated with Subcontractor's Warranty obligations. If Owner or Amerwest caused the warrantable deficiency, the Subcontractor shall continue to be obligated to correct the deficiency, but shall be entitled to fair compensation for its direct costs of repairs thus made. This Warranty and the obligations herein survive completion of the Work and any termination or cancellation of the Subcontract.

This Warranty shall be deemed to be incorporated into the Final Lien Waiver as consideration of the final payment.

25. Special Provisions (The following Special Provisions are specific obligation of Subcontractor):

- a. The Subcontractor agrees that no materials or equipment required by the Specifications will be purchased under a conditional sale contract or with the use of any security agreement or other vendor's title or lien retention instrument.
- b. The Owner may assign this Subcontract or any rights hereunder, to the Lender or the HUD Commissioner. Subcontractor may not assign to others his obligations or rights under the Subcontract without approval of Amerwest, Owner, and Lender.
- c. The Subcontractor further understands that the Building Loan Agreement provides that, in the event of the failure of the Owner to perform its obligations to the Lender there under, the Lender may, as attorney-in-fact for the Owner, undertake completion of the project in accordance with this Contract. In the event the Lender elects not to undertake such completion, the Subcontractor's obligation under this contract shall terminate.

- d. The Subcontractor shall include in all sub-subcontracts, equipment leases and purchase orders a provision requiring the sub-subcontractor, equipment lessor or supplier to certify their costs incurred in connection with the Project, in the event the Commissioner determines there is an identify of interest between either the Owner or the Subcontractor and such sub-subcontractor, equipment lessor or supplier.
- e. It shall be the affirmative obligation of Subcontractor to inform and include Subcontract Documents in all sub-subcontract agreements. The Subcontractor agrees that he is fully responsible to Owner and Amerwest for the acts and omissions of his sub-subcontractors, materialmen, suppliers, employees and/or piece workers. Nothing contained in the Subcontract including but not being limited to the issuance or joint or direct checks to Subcontractor's employees, sub-subcontractors, suppliers, or materialmen shall create any contractual relation between such parties and Amerwest, Owner, and/or Architect.
- f. The following are general conditions to this Subcontract and shall be included within and required of all sub-subcontracts of Subcontractor:
  - 1. Not discriminate against any employee or applicant for employment because of race, creed, color, age, sex, national origin, or disability.
  - 2. Not assign rights under this Agreement or any Work Order issued and accepted hereunder or any amounts due or to become due hereunder without the written consent of the Amerwest and Owner; nor subcontract the whole of any Subcontract Work without the written consent of the Amerwest; nor further subcontract portions of any Subcontract Work without written notification to the Amerwest.
  - 3. Promptly submit shop drawings and samples as requested by Amerwest, in order to carry on the Subcontract Work efficiently without delay in the progress of the Project. Subcontractor shall resubmit within three (3) working days, any shop drawings or submittals returned for correction.
    - a. Comply with all Federal, State and local laws and ordinances relating to construction of buildings or structures, give adequate notices relating to the Subcontract Work to the proper authorities, and secure and pay for all necessary licenses or permits to carry on the Subcontract Work as described in the applicable Subcontract Documents.
    - b. Comply with Federal and State laws relating to reporting and payment of federal and state payroll taxes on wages, including but not limited to, Federal Income Tax withholding provisions of the Internal Revenue Code, Federal Insurance Contribution Act (FICA) payments, and Federal Unemployment Tax Act (FUTA) payments, applicable state unemployment tax payments.
    - c. Comply with all Federal, State and local laws, including, but not limited to, the statutes and regulations promulgated pursuant to statute related to Missouri Workers' Compensation Act; Consolidated Omnibus Budget Reconciliation Act (COBRA); Immigration Reform and Control Act of 1986; Consumer Credit Protection Act; Title 3, Title 7 of the 1964 Civil Rights Act; Age Discrimination Employment Act; Employees Retirement Income Security Act (ERISA); and Occupational Safety and Health Act of 1970 (OSHA), the Construction Safety Act of 1969, and the Clean Water Act, with all regulations promulgated by the Environmental Protection Agency including Storm Water Pollution Prevention Plan requirements, all may be amended from time to time. The Subcontractor shall defend and be responsible for all citations, fines and penalties, and shall indemnify and hold Amerwest, Owner, and all other subcontractors harmless from any loss sustained by reason of any failure to so comply. As an independent contractor, Subcontractor is exclusively responsible for compliance with these regulations and laws and for the safety of Subcontractor's employees.
      - i. Adopt a Drug Free Workplace Program equal to or exceeding the Amerwest's Drug Free Workplace Program, including Subcontractor's pre-employment and post-accident testing of employees and Subcontractor's permanent removal of employees failing tests or refusing to submit to tests.
      - ii. Exercise every precaution necessary to eliminate asbestos and/or lead-containing materials from any of the materials incorporated in the Subcontract Work. If asbestos fibers or lead contaminants are found in materials associated with the Subcontract Work, the Subcontractor shall be responsible for determining the source of and removing all materials containing asbestos fiber or lead contaminants.
      - iii. Promptly provide Amerwest notice of any condition that could increase Amerwest's cost of the Work or Amerwest's liability for claims or damages, to allow Amerwest to confirm the condition and mitigate damages arising from the condition.
      - iv. There will be one request for payment per month, submitted in writing, no later than the 25th of the month for work competed by the 25th. The request for payment (invoice) shall be submitted on the Exhibit C form attached to the agreement. Your standard invoice form may be attached to the Exhibit C; however, payment will not be made without the Exhibit C form being submitted.
      - v. All of this Subcontractor's workmen assigned to this project must be either American citizens or have a current United States work permit.
      - vi. This Project will have both union and non-union subcontractor forces on the project site. Your employees will enter only the gate designated for your company. Violators will be subject to a fine by the Owner. By executing this Contract you are acknowledging your

understanding of these circumstances and agree that no work stoppage will occur as a result of other subcontractor forces working on the jobsite.

This above language must be included in all sub-subcontracts, materialmen, and supplier contracts and is a part of the Subcontract Documents.