

Model Construction, LLC
1826 Race Street
Cincinnati, OH 45202
Phone (513) 559-0048
Fax (513) 559-4578
<http://www.modelgroup.net/>

00-0000

SUBCONTRACT AGREEMENT

THIS AGREEMENT is effective as of _____ between **Model Construction, LLC**, an Ohio Limited Liability Company("Model") located at 1826 Race Street, Cincinnati, Ohio 45202 and _____ ("Subcontractor") located at _____, _____, _____, _____, phone: _____, fax: _____ under the following circumstances:

By Contract dated _____ (the "Contract"), between Model and _____ ("Owner") located at 1826 Race Street, Cincinnati, OH 45202, Model has agreed to provide certain work, services, materials, equipment, tools, labor and supervision for the construction of: _____ (the "Project"), _____ (the "Construction Site"). The Contract together with all general, special and supplemental conditions, drawings, plans, specifications and environmental reports referred to in the Contract and made a part thereof, and all addenda thereto and other documents forming a part thereof, as prepared and/or provided by:

_____, _____ (Architect/Engineer) and Model, are hereinafter collectively referred to as the "Contract Documents."

Subcontractor has agreed to perform a portion of the work under the Contract Documents for Model, subject to the terms and conditions set forth in this Agreement.

Now, therefore in consideration of the mutual covenants set forth below, Model and Subcontractor agree as follows:

1. Incorporation by Reference of Contract Documents; Interpretation of Documents

1.1. The Contract Documents are incorporated in this Agreement by reference and made a part hereof. Contract Documents include:

- Exhibit A Drawing List & Specifications Index
- Exhibit B Subcontract Scope of Work
- Exhibit C Project Schedule
- Exhibit D Schedule of Values-(Unit Prices and/or Allowances, if applicable)
- Exhibit E Change Order Request Form
- Exhibit F Homeland Security/Legal Work Status Form
- Exhibit G Project Site Locations, if applicable
- Exhibit H City of Cincinnati Section 3 Packet, if applicable
- Exhibit I City of Cincinnati Form 2004, if applicable
- Exhibit J Prevailing Wage Information, if applicable
- Exhibit K Notice of Commencement
- Exhibit L Subcontractor/Vendor/Supplier List
- Exhibit M City of Cincinnati Wage Enforcement, if applicable
- Exhibit N Insurance Provisions

1.2. Subcontractor represents and agrees that it has carefully examined and understands this Agreement and the Contract Documents. The Contract Documents (other than provisions relating to the contract price or fee payable to Model) have been made available to Subcontractor and will remain available to Subcontractor at reasonable times at the Construction Site and the Model main office.

1.3. This Agreement and the provisions of the Contract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of this Agreement conflicts or is inconsistent with a provision of the Contract Documents, or if there is a conflict or inconsistency within this Agreement or within any of the Contract Documents, the provision imposing the higher quality, greater quantity or greater duty or obligation on Subcontractor shall govern.

1.4. Subcontractor shall be bound by all interpretations of the Contract Documents made by the Owner or

Subcontractor Initials: _____

the Architect/Engineer and furnished to it by Model that are binding upon Model.

- 1.5. **Notwithstanding anything contained herein, all change orders are not valid unless they are in writing and counter-signed by Stephen Smith / Chief Executive Officer, Bobby Maly / Chief Operating Officer, Robert Keppler / President of Construction or George Keppler / V.P. of Construction.**
-

2. Statement of Subcontractor's Work

- 2.1. Subcontractor shall furnish and perform all work, labor, materials, equipment, tools and all other services and facilities necessary for a complete and usable system in accordance with the Contract Documents as detailed in paragraph 1.1 and the exhibits to this contract.
- 2.1.1. Project Commencement Date (subject to conditions outlined in Section 2.3): **00/00/00**
- 2.1.1.1. As established by the Contract Documents Exhibit C Project Schedule
- 2.1.2. Required documentation to be submitted to Model's office and approved by Model prior to commencement:
- 2.1.2.1. CERTIFICATE OF INSURANCE
- 2.1.2.2. CERTIFICATE OF WORKERS COMPENSATION – **MUST BE FOR STATE WHERE PROJECT IS LOCATED**
- 2.1.2.3. IRS FORM W9
- 2.1.2.4. HOMELAND SECURITY / LEGAL WORK STATUS (EXHIBIT F)
- 2.1.2.5. EXECUTED SUBCONTRACT AGREEMENT
- 2.1.2.6. SCHEDULE OF VALUES (AIA G703) (EXHIBIT D)
- 2.1.2.7. SUB/VENDOR/SUPPLIER LIST (EXHIBIT L)
- 2.2. Subcontractor's Work includes, but is not limited to, such of the following as may be necessary to perform and complete Subcontractor's Work: all plant, materials, tools, equipment (whether for temporary or permanent use), scaffolding, supplies, transportation cartage, loading, hoisting, forms, patterns, models, shop drawings, measurements and other facilities, all labor, work, supervision, cutting; patching, cleaning, temporary construction, protection and other services; and all insurance, taxes, wages, including prevailing wages where applicable, benefits, royalties, temporary utilities and other related costs except as otherwise provided in the Contract Documents. It is intended that Subcontractor's Work includes all work and things necessary to produce a completed and usable job in all respects. No Claim shall be made by Subcontractor based upon a change in the scope of Subcontractor's Work if such work was set forth in or reasonably implied by this Agreement or the Contract Documents;
- 2.3. Subcontractor's Work shall be performed in accordance with the requirements of this Agreement and the Contract Documents. With respect to Subcontractor's Work, Subcontractor agrees to be bound to Model by all of the terms and provisions of the Contract Documents and to assume toward Model all of the duties, obligations and responsibilities that Model by those Contract Documents assumes toward the Owner. Subcontractor further agrees that Model shall have the benefit of all rights, remedies and redress against Subcontractor that the Owner under the Contract Documents, has against Model.
- 2.4. If this Agreement or the Contract Documents requires Subcontractor to provide design services and specify design and performance criteria relating thereto, Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontractor's Work. Design services provided by Subcontractor shall be procured from licensed design professionals retained by Subcontractor as permitted by the law of the place where the Project is located. The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by the Designer. Shop drawings and other submittals related to the Subcontractor's work designed or certified by the Designer, if prepared by others, shall bear Subcontractor's and the Designer's written approvals when submitted to Model. Model shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer. If the subcontract between the Subcontractor and Model is terminated under Section 11 or 12 of this agreement, Model retains ownership of any partial or completed design documents, drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by the Designer.
- 2.4.1. If the Designer is an independent professional, Subcontractor shall notify Model in writing, prior to the commencement of the Designer's services, of the name and address of the Designer. Such design services shall be procured pursuant to a separate agreement between Subcontractor and the Designer. The Subcontractor-Designer agreement shall not provide for

any limitation of liability as referenced in Exhibit N, Professional Liability/Contractor's E & O or exclusion from participation in the multiparty proceedings requirement of Paragraph 12. Subcontractor shall notify Model in writing if it intends to change the Designer. In all events Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Contract Documents.

2.5. Unless otherwise provided in the Contract Documents and except for emergencies, Subcontractor shall direct all communications related to the Project to Model's Project Manager assigned to this Project.

3. Subcontract Price

3.1. Subject to all of the terms and conditions of this Agreement and the Contract Documents, Subcontractor shall receive, for performing Subcontractor's Work, the sum of (_____) (Subcontract Price). If Subcontractor's Work is to be performed on a unit price basis, the Subcontract Price shall be calculated as set forth in Exhibit D, Unit Prices and/or Allowances attached hereto. The Subcontract Price is firm and includes, all federal, state, county and municipal taxes imposed by law and is based upon labor, services, materials, equipment or other items acquired, performed, furnished or used in connection with Subcontractor's Work, including, but not limited to, sales, use, gross receipts, excise, unemployment and personal property taxes payable by or levied or assessed against Owner, Model or Subcontractor. Where the law requires any such taxes to be stated and charged separately, the total price of all items included in Subcontractor's Work plus the amount of such taxes shall not exceed the Subcontract Price.

3.2. Tax exempt projects: Model will provide the Subcontractor with a copy of the Owner's tax exempt form for use in purchasing materials.

3.3. Licenses: Subcontractor will verify federal, state, local and municipal licensing requirements and secure and pay for any and all licenses required to work on the project. All licensing costs shall be covered in the Subcontract Price.

3.4. Changes: If Model gives Subcontractor notice of a proposed change in Subcontractor's Work, Subcontractor shall promptly (within 10 days unless otherwise agreed) submit to Model a detailed written pricing proposal to implement the change. Such proposal shall be for a lump sum unless otherwise directed by Model and shall be based on reasonable estimates of actual costs to perform the change plus markups permitted by the Owner Contract and Model's policies. Model may, with or without requesting or receiving any such proposal, submit to Subcontractor a proposed Change Order reflecting additive or deductive changes in Subcontractor's Work and any related changes in the Subcontract Price. If Model does so, such Change Order (unless marked "draft" or otherwise indicated as preliminary) shall be final and binding and shall be as effective as if signed and returned by Subcontractor unless Subcontractor gives notice of objection to Model, specifying in detail its disagreement and the basis therefor, within 3 business days after receipt of Model's proposed Change Order. If Subcontractor objects to any proposed Change Order, and Model thereafter directs that Subcontractor proceed with the change anyway, Subcontractor shall immediately proceed with the change and the dispute shall be resolved as provided in Section 16; pending such resolution, Model shall have the right to make payments based on the pricing in the proposed Change Order.

4. Time of Performance; TIME IS OF THE ESSENCE, Project Schedule

4.1. Subcontractor shall commence Subcontractor's Work at the earlier of instruction to proceed from Model or the effective date of this Agreement. Subcontractor shall diligently and continuously prosecute and complete Subcontractor's Work and coordinate Subcontractor's Work with the other work being performed on the Project, in accordance with the Project Schedule (Exhibit C Project Schedule), any revisions to the Project Schedule, and any other scheduling requirements listed in Contract Documents, so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of Subcontractor's Work or other work on the Project. **TIME IS OF THE ESSENCE FOR THIS SUBCONTRACT AGREEMENT.**

4.2. If Subcontractor fails to perform any phase of Subcontractor's Work in accordance with the start, finish, duration, phasing or sequence provisions of the Project Schedule, Subcontractor shall, at its expense, upon 24 Hours notice from Model, schedule such overtime work and make such increases in its working forces, or either, as Model may require in order for Subcontractor to promptly cure its failure to comply with the Project Schedule. If the progress of the Project or any component thereof is delayed, obstructed, hindered or interfered with by any fault, neglect, or failure to act of Subcontractor or any of its officers, agents, employees, subcontractors or suppliers so as to cause

any additional cost, expense, liability or damage to Model, Owner or the Architect/Engineer, Subcontractor agrees to compensate Model, the Owner and the Architect/Engineer for, and indemnify them against, all such costs, expenses, liabilities or damages, including Liquidated Damages if specified in the Contract Documents.

- 4.3. If Model directs Subcontractor to schedule overtime work or other work not otherwise required by this Agreement or the Contract Documents and not pursuant to Section 4.2, Subcontractor shall be granted an increase in the Subcontract Price equal to the premium time component of wages paid to its employees, plus taxes and insurance payable thereon, but excluding, unless specifically authorized by the Owner, any allowance for overhead, profit, impact costs or any other costs or expenses.
- 4.4. Subcontractor shall participate and cooperate in the development of the Project Schedule and any revisions thereto. Subcontractor shall, at any time within forty-eight (48) hours after receipt of notice by Model, furnish such information as may be requested by Model for the scheduling of the start, finish, duration, phasing and sequence of operations required for Subcontractor's Work, including reasonable allowances for out of sequence work, weather and usual construction delays, and to coordinate the same with Model's overall schedule requirements. Subcontractor shall continuously monitor the Project Schedule so as to be fully familiar with the start, finish, duration, phasing and sequence of operations of Subcontractor's Work and of other work on the Project. Subcontractor acknowledges that the Project Schedule will be periodically revised to reflect Project progress and agrees to comply with such revisions. Subcontractor shall coordinate its Work with other subcontractor's work in such manner as to prevent schedule disruptions or delays or interfering with the Work of other subcontractors. Coordination to include MANDATORY Project Coordination Meetings and any Coordination Drawings required for its scope of work. Subcontractor shall inform Model about materials on hand, progress made in the manufacturing and fabricating of materials for Subcontractor's Work, or any other matters relating to the condition or progress of Subcontractor's Work. Model, Owner's representatives and the Architect/ Engineer at all times shall have free access to the office, shops and yards of Subcontractor and its subcontractors and material suppliers to verify any information about Subcontractor's Work.
- 4.5. Subcontractor, in person or by duly authorized representative having power to act and acceptable to Model, shall attend, at its own expense, all meetings or conferences that Model may call at the Construction Site or elsewhere, for the purpose of discussing progress of the work, safety at the Construction Site, ways to expedite the completion of the Project, or other matters bearing on the performance of Subcontractor's Work. When reasonably possible, Subcontractor will be given at least forty-eight (48) hours notice of such meetings.

5. Examination of Documents and Investigation of Site; Concealed or Unknown Conditions

- 5.1. By execution of this Agreement, Subcontractor represents that it has carefully studied and compared the Contract Documents with each other and with this Agreement and reported to Model any errors, inconsistencies or omissions discovered. Subcontractor shall also review carefully any changes in this Agreement or the Contract Documents and within five (5) days of knowledge of such changes, report to Model, in writing, any errors, inconsistencies or omissions discovered. Subcontractor shall be liable to Model or the Owner for damage resulting from errors, inconsistencies or omissions within or between the Contract Documents and this Agreement which Subcontractor in the exercise of reasonable diligence should have recognized and reported to Model.
- 5.2. Subcontractor represents that it has made such investigation and inspection (including without limitation any required by the Contract Documents) of the nature and location of the work and the conditions of the Construction Site (including, if relevant, the character of the surface and subsurface conditions or obstacles to be encountered on, under and around the Construction Site, access thereto, impact of safety and health requirements and storage and work areas available to Subcontractor thereon) as are necessary to determine the difficulty and cost to Subcontractor of properly performing Subcontractor's Work. Subcontractor represents that it has had full opportunity to view, sample, inspect or test the conditions on the Construction Site prior to executing this Agreement, that it can satisfy all requirements of this Agreement and the Contract Documents, and it is not relying upon any opinions or representations of Model, the Owner, or any of their respective officers, agents or employees. Model shall not be responsible for any interpretations or conclusions with respect to Subcontractor's Work or the Construction Site made by Subcontractor on the basis of information made available to Subcontractor by Model, unless Model has specifically assumed liability to Subcontractor with respect to such information in this Subcontract.

5.3. If conditions are encountered at the Construction Site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Subcontractor shall give Model notice promptly before conditions are disturbed and in no event later than forty-eight (48) hours after first observance of the conditions, or, if sooner, the date Model is required to report the conditions pursuant to the Contract Documents. Subcontractor shall not be entitled to any increase in the Subcontract Price or damages by reason of any such conditions unless Owner is liable for and pays the same to Model, nor shall Subcontractor be entitled to an extension of the time for performance of Subcontractor's Work unless Owner grants such extension of time for the performance of Subcontractor's Work to Model pursuant to the provisions of the Contract Documents. Model shall not be obligated to apply to Owner for an increase in the Subcontract Price or for damages on behalf of Subcontractor or for an extension of time under this Agreement unless such application is permitted by the Contract Documents, and Subcontractor, at its expense, does all things necessary in order to process such Claim. Model, upon receipt of any payment by Owner to Model based upon such Claim for Subcontractor, will pay the same to Subcontractor less costs, expenses and attorney fees incurred by Model on account of or relating to such claim. Except to the extent provided in this Section 5.3, Subcontractor waives the right to make any Claims based upon conditions encountered at the Construction Site.

6. Insurance and Worker's Compensation

6.1. Subcontractor, at its expense, shall comply with the minimum insurance terms, if any, applicable to subcontractors as set forth in the Contract Documents between Model and Owner, but no less than the requirements listed in Exhibit N. Subcontractor shall obtain, prior to the commencement of Subcontractor's Work, and maintain in effect until the final acceptance of Subcontractor's Work and for such additional periods as may be required by the Contract Documents.

6.2. Model and Subcontractor waive all rights against (A) each other and their officers, employees and agents and (B) Owner, Architect/Engineer, Architect's/Engineer's consultants and their respective officers, employees and agents for damages caused by fire or other perils to the extent waived between Model and the Owner and to the extent covered by property insurance provided by Model or Subcontractor, except such rights they may have to proceeds of Project builder's risk insurance. Subcontractor shall require of its lower tier subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. Each party's property insurance policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

6.3. In the event that the Subcontractor fails to obtain and keep in full force and effect any of the insurance requirements under this Agreement, Model may purchase such coverage. Subcontractor shall repay any sums so advanced by Model upon demand. The provisions of this Section shall not be construed to eliminate or in any way reduce any other rights which Model or the Owner have by law or through this Agreement or the Contract Documents.

7. Indemnity

7.1. Subcontractor is aware of the immunity afforded to it, protecting it from suits by its employees or third parties for damages relating to injuries suffered by its employees in the course of and arising out of their employment for the Subcontractor which may be brought outside of the workers' compensation system in the state in which it is performing its services for Model. Subcontractor, for purposes of this subcontract, waives that immunity and to the fullest extent permitted by law Subcontractor shall indemnify, defend, and hold harmless Model (including its owners, affiliates and subsidiaries), its officers, directors, agents, shareholders, successors and employees (the "Indemnitees") from and against any and all claims liability, actions, causes of actions, complaints, costs, expenses (including prejudgment interest), and demands whatsoever in law or in equity, including without limitation those for bodily injury, personal injury, sickness, disease, death or property damage (including but not limited to the work itself) and those resulting from subcontractor's failure to pay prevailing wages arising out of, or alleged to arise out of, or as a result of, or alleged to be the result of the performance of Subcontractor's Work under this Agreement. Subcontractor, at Subcontractor's sole

expense shall promptly dispose of all such claims, defend all lawsuits filed against Indemnitees on the account thereof, pay all judgments rendered against Indemnitees in such lawsuits (including any prejudgment interest assessed against any Indemnitee), and reimburse Indemnitees in cash upon demand for all reasonable expenses incurred by Indemnitees on the account thereof including, but not limited to attorney fees, expert witness fees and court costs. Subcontractor shall indemnify Indemnitees and hold Indemnitees harmless from the above referenced claims regardless of whether such claim is caused or alleged to be caused in part by any joint or concurrent negligent act (either active or passive) or omission by an Indemnitee; provided however, that Subcontractor shall not be obligated to indemnify for those claims to the extent that the same is proximately caused by the sole negligence or willful misconduct of Indemnitees or Indemnitee's agents, servants or independent contractors who are directly responsible to Model, excluding Subcontractor. Notwithstanding anything to the contrary contained herein, Model, or any other Indemnitee, at its option shall have the right to participate in the defense of any claims asserted against it, approve the selection of counsel and approve the terms of any settlements made in its name or on its behalf.

- 7.2. In any and all claims against the Indemnitees by any employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts the Subcontractor may be liable Subcontractor's indemnification obligation shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 7.3. If any part of the indemnity provisions set forth in this Agreement is adjudged to be contrary to law the remaining parts of the provisions shall, in other respects, be and remain legally effective and binding. These indemnity provisions shall not be construed to eliminate or any way reduce any other indemnifications or rights which Model or the Owner have by law or through this Agreement or the Contract Documents.

8. Progress Payments

- 8.1. As set forth in the Project Specifications, Subcontractor shall deliver to the office of Model a progress payment application, along with all other required documents.
- 8.2. No amount shall be included in the Subcontractor's pay application for additional or changed work without a fully executed change order issued by Model.
- 8.3. Notwithstanding anything herein, **all change orders are invalid unless they are in writing and counter signed by Stephen Smith / Chief Executive Officer, Bobby Maly / Chief Operating Officer, Robert Keppler / President of Construction or George Keppler / V.P. of Construction.**
- 8.4. Payment to Subcontractor is subject to receipt of payment from Owner and acceptance/approval of all proper paperwork from Subcontractor. Model shall pay to Subcontractor the amount owed less retainage of ten percent (10%). If the owner does not pay Model for any reason whatsoever, including the Owner's financial inability to pay, Subcontractor agrees that Model shall not be liable for the payment, nor be indebted to Subcontractor. Subcontractor assumes the credit risk of the Owner.
 - 8.4.1. No payment of the Subcontract Price, whether a partial payment or the final payment shall be deemed an acceptance of Subcontractor's Work.
 - 8.4.2. If the Contract Documents provide that the percentage retained by Owner shall be reduced or eliminated after Model has completed a specified portion of the Project, then at Model's sole discretion subcontractor retainage will be released accordingly, provided Subcontractor has met all requirements of this agreement.
- 8.5. Model shall have the right to withhold all or any portion of each progress payment to Subcontractor until Subcontractor has corrected improper and rejected work, any mechanics' liens filed or claims made by any employee, subcontractor of any tier or materialmen of any tier Subcontractor have been released, and Subcontractor has delivered to Model a receipt on Model's standard form – Release of Lien, acknowledging such payment to be in full, except for retained percentage, if any. Without limiting the foregoing or any other remedy available at law or in equity, Model shall be entitled to deduct as a set-off to any money due or otherwise to become due to Subcontractor (i) Model's cost (including reasonable overhead and profit) of correcting any nonconforming Subcontractor's Work; (ii) Model's cost (including reasonable overhead and profit) of supplementing Subcontractor's field forces if Subcontractor fails to maintain progress satisfactory to Model; (iii) any liability of Model to Owner arising from any breach by Subcontractor of its obligations, and (iv) any other amount which Subcontractor or any of its affiliates owes Model or any of its affiliates arising out of this Project or other projects. For the purposes hereof, the term "affiliates" shall include any individual, corporation, Limited Liability Company or partnership, joint venture or other entity

controlled by or under common control with Subcontractor, as the case may be. Model may give notice to Subcontractor of any such set-off and if Model does so, such set-off shall be final and binding and Subcontractor waives any right to dispute the same unless Subcontractor gives notice of objection to Model, specifying in detail its disagreement and the basis therefor, within 3 business days after receipt of Model's set-off notice. If Subcontractor objects to any set-off, the dispute shall be resolved as provided in Section 15 and pending such resolution, Model shall have the right to withhold the disputed amount.

9. Final Payment

9.1. As set forth in the Project Specifications, Subcontractor shall within 10 days of the completion of Work deliver to Model:

9.1.1. Its final payment application with Anderson 44 form;

9.1.2. Final release of liens by Subcontractor, materialmen and tier subcontractors;

9.1.3. Copies of O & M manuals, "as-built" drawings, warranties and guarantees required by the Contract Documents;

9.1.4. All other documents required by this Agreement or the Contract Documents.

9.2. Model shall have the right to withhold twice the amount necessary to complete any portion of Subcontractor's Work included on a PUNCH LIST supplied by Model, the Owner and/or the Architect/Engineer.

9.3. Upon approval of a final contract amount by both Subcontractor and Model, Subcontractor is to submit a final pay application for retention. Upon approval of the documents required under Section 9.1, acceptance of Work by Owner and subject to receipt of payment by Owner to Model for retainage withheld by Owner on Model's contract, Model shall pay to Subcontractor the remaining balance owed to it. Subcontractor shall provide a Final release of Lien for payment in full for all sums owed to it under this Agreement.

9.4. The Subcontractor will transfer the manufacturers' warranties for any goods installed. The Subcontractor warrants that all work and goods will be fit for the purpose intended.

10. Payments by Subcontractor; Mechanics' Liens

10.1. Subcontractor shall furnish to Model monthly satisfactory evidence (Anderson 44) as to the status of its accounts, including sworn affidavits setting forth the amounts owed and due and names of all its tier subcontractors, equipment suppliers and materialmen.

10.2. Subcontractor shall pay promptly when due all labor payrolls and amounts owed by it to its tier subcontractors, equipment suppliers and materialmen. If Subcontractor does not pay its debts and obligations as hereby required, Model after 5 days notice to Subcontractor may pay the amounts owed either directly or by joint check.

10.3. If Lien(s) are filed with respect to the Project arising from Subcontractor's Work, Subcontractor shall promptly cause the same to be removed. If not done within seven (7) days, or such shorter time as is required by the Contract Documents, after filing, Model may take any and all action, make payments as may be necessary or appropriate in Model's sole and absolute discretion in order to remove such lien and/or withhold from any amounts becoming due to Subcontractor an amount equal to twice the amount of the liens until such Liens are fully satisfied or discharged.

10.4. If required, the amount of such payments to resolve 10.2 or 10.3 shall then be deducted from Subcontractor's Price. No payment by Model, or the right to make payment, shall be deemed to create a contractual or other relationship between Model and any tier subcontractor, supplier, materialmen, or laborer claiming under Subcontractor. Model shall back charge Subcontractor the amount paid plus expenses, but no less than 15%, incurred by Model.

10.5. Subcontractor waives all rights to file a mechanics or artisan lien.

11. Termination Without Fault of Subcontractor

11.1. If Model or the owner terminates the Contract between them for any cause permitted thereby (except a default by Model), Model by notice to Subcontractor may terminate this Agreement. In addition, Model shall have the right at any time and without cause by written notice to Subcontractor to terminate this Agreement and require Subcontractor to cease work hereunder. In either such event Subcontractor, as directed by Model, shall discontinue Work, remove its equipment, materials (paid for materials are to be left on site) and employees from the Construction Site and take such action as may be necessary to terminate its agreements with its tier subcontractors, and to minimize its losses resulting from such termination.

- 11.2. If this Agreement is terminated, pursuant to Section 11.1 Subcontractor shall deliver to Model a statement covering the balance owed under this Agreement for work completed prior to the termination, additional costs for which it is liable by reason of such termination, and 10% for overhead and profit combined for work completed prior to the termination.
- 11.3. If Model has terminated this Agreement without cause as described in Section 11.1 and the Owner is not liable with respect to the same, the statement provided by Subcontractor pursuant to Section 11.2 shall be the maximum amount for which Model may be liable by virtue of such termination.
- 11.4. If the Owner has terminated the Contract as described in Section 11.1, Model, subject to its approval of Subcontractors statement, shall include the statement provided by Subcontractor pursuant to Section 11.2 in its claim against the Owner by reason of such termination. Subcontractor shall be responsible for proving the losses suffered by it and shall indemnify or repay Model for any costs incurred by Model in presenting such claim to the Owner. Upon resolution with the Owner as to the amount to which Subcontractor is entitled by reason of the termination of the Contract between Model and the Owner and after and subject to receipt of payment by Model of such amount, Model shall pay to Subcontractor the balance, if any, to which it is entitled, less any back charges or other sums owed by Subcontractor to Model. Payment is subject to Subcontractor meeting all other requirements of this Agreement and the Contract Documents. Model shall not be liable to Subcontractor for termination based on the Owner's termination of the Contract for any amount in excess of that provided in this Section 11.4.
- 11.5. Subcontractor shall include a similar right of termination in its agreements with its own tier subcontractors and require tier subcontractors and materialmen of every tier to include similar provisions in their agreements with others.

12. Default by Subcontractor; Termination for Cause

- 12.1. Model may order the Subcontractor in writing to suspend and terminate this Agreement if the Subcontractor:
 - 12.1.1. Persistently or repeatedly refuses or fails to supply enough properly skilled workers, tools, equipment and/or materials of the proper quality and quantity;
 - 12.1.2. Fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or delay of or interference with the work of Model and any other Subcontractors;
 - 12.1.3. Fails to make payment to tier subcontractors for materials or labor in accordance with the respective agreements between the Subcontractor and tier subcontractors;
 - 12.1.4. Disregards safety, laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
 - 12.1.5. Otherwise is guilty of substantial breach of a provision of the Contract Documents.
- 12.2. When any of the above reasons exist, Model upon verification that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of Model and after giving the Subcontractor 24 hr. written notice, terminate the Agreement with the Subcontractor and may:
 - 12.2.1. Take possession at the site of all materials and supplies;
 - 12.2.2. Accept assignment of tier subcontracts; and
 - 12.2.3. Finish the Work by whatever reasonable method Model may deem expedient. Upon request of the Subcontractor, Model shall furnish to the Subcontractor a detailed accounting of the costs incurred by Model in finishing the Work.
- 12.3. When Model terminates this Agreement for one of the reasons stated in Section 12.1, the Subcontractor shall not be entitled to receive further payment until the Work is finished.
 - 12.3.1. Termination of Subcontractors Multiple Contracts: In the event that the Subcontractor has with Model contracts for Work at other sites and in the event Subcontractor's contract on any site is terminated for any reason, whatsoever, then Model has the right to terminate any and all Agreements with Subcontractor.
 - 12.3.2. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by Model and the Owner and not expressly waived, such excess shall be paid to the Subcontractor. If such costs and damages exceed the unpaid balance, the Subcontractor shall pay the difference to Model. The obligation for payment to the Subcontractor or Model, as the case may be shall survive termination of the Contract. In the event that the Subcontractor has with Model contracts for Work at other sites Model has the

right to withhold payment on those contracts and use proceeds from those contracts to pay all excess costs on the terminated contract.

13. Assignment; Tier Subcontracting

- 13.1. Subcontractor shall not assign this Agreement, any right, liability relating to it or subcontract the whole or any part of the Work without the written consent of Model. At Model's option and sole and absolute discretion, any assignment made without the Model's consent is void. No consent to or acceptance by Model of any assignment or tier subcontract shall relieve Subcontractor of any or all of its responsibilities under this Agreement.
- 13.2. Subcontractor shall provide to Model, with the return of this executed Agreement, a complete list of all material suppliers and tier subcontractors that it plans on entering into an agreement with for this project.
- 13.3. All requirements of this Agreement and the Contract Documents shall apply to Tier Subcontracts.

14. Safety

- 14.1. Subcontractor and Tier Subcontractors are required to comply with all applicable standards as set forth by Department of Labor (OSHA), Environmental Protection Agency (EPA), Housing and Urban Development (HUD) and any and all other federal, state and local government agencies or quasi-government agencies.
- 14.2. Subcontractor and Tier Subcontractors shall familiarize itself with and comply with all Model Safety Policies as set forth in the Project Specifications.
- 14.3. Subcontractor and Tier Subcontractors, while working on Model project sites, shall be subject to Model Safety Disciplinary Policies, as detailed in the Contract Documents.
- 14.4. All Subcontractor employees and tier subcontractors, materialmen and other personnel at Model project sites are subject to post accident and near miss drug testing, per the Contract Documents.

15. Dispute Resolution

- 15.1. Any and all claims between the parties hereto concerning the performance, breach, construction or interpretation of this Agreement or the performance thereof, shall initially be worked out between the two parties. If an agreement cannot be reached between Model and Subcontractor, then the claim will be submitted first to non-binding mediation, and thereafter, such claims shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) currently in effect. The demand for arbitration shall be filed in writing with the other party to this Contract and with the AAA. Applicable statutory limitations on commencement of proceedings shall apply.
- 15.2. The arbitration will be conducted through the AAA's Cincinnati office. The parties to the arbitration proceeding may conduct discovery in accordance with the Ohio Rules of Civil Procedure. The arbitrators will have the power to subpoena witnesses and documents as they deem necessary and the parties may require the arbitrators to issue such subpoenas, and in either case such subpoenas may be enforced by a Court having jurisdiction.
- 15.3. The arbitrator(s) shall not be empowered to award damages in excess of compensatory damages, and each party hereby irrevocably waives any right to recover damages other than compensatory damages. However, the arbitrators will be entitled to grant injunctive relief as they deem appropriate.
- 15.4. The arbitrator(s) will render a judgment and award within thirty (30) days after conclusion of the arbitration. The prevailing party or parties in the arbitration will be entitled (at the arbitrators' determination) to an award for its/their reasonable attorneys' fees and other reasonable expenses incurred in connection with the arbitration claim, including but not limited to expert witness fees, such reasonable fees and expenses to be determined by the arbitrator.
- 15.5. The AAA's Case Service Fee and the compensation and administrative fees of the arbiters will be shared by all parties to the arbitration on a per capita basis. Otherwise, each party will bear its own expenses in connection with the arbitration, except as otherwise provided herein.
- 15.6. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Subcontractors and other persons or entities substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No persons or entities other than the Owner and Subcontractor shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity not named or described

therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Contract shall be specifically enforceable under applicable law in any court having jurisdiction thereof. If, for any reason, all of the parties or entities involved in the claims or disputes cannot be joined in a multi-party consolidated arbitration, then the arbitration shall proceed with the parties that may be joined.

15.7. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

16. Reserved Gates

16.1. Reserved gates may be established on the Construction Site. If established, Entrance No. 1 shall solely be utilized by neutral (non-union) firms, their subcontractors, employees, suppliers, deliverymen, material handlers, and materialmen. Entrance No. 2 shall solely be utilized by union firms, their subcontractors, employees, suppliers and deliverymen, material handlers, and materialmen. These entrances, if established, shall be clearly marked and shall not be misused. The entrances shall also be observed by the management of Subcontractor and its subcontractors, suppliers, materialmen, deliverymen, and material handlers as well as all other employees.

16.2. In the event that Subcontractor violates the provisions of Section 16, Model shall have the right, without prejudice to any other rights or remedies it may have, to terminate the engagement of Subcontractor for Subcontractor's Work, and shall have the right to enter upon the Construction Site and take possession, for the purpose of completing Subcontractor's Work, of all of Subcontractor's materials, tools and equipment thereon and to finish Subcontractor's Work either with its own employees or other subcontractors; and in case of such termination of Subcontractor, Subcontractor shall not be entitled to receive any further payments under this Agreement or otherwise but shall nevertheless remain liable for any damages which Model incurs. If the expenses incurred by Model in completing Subcontractor's Work shall exceed the unpaid balance due Subcontractor, Subcontractor shall pay the difference to Model together with any other damages incurred by Model as the result of Subcontractor's default.

17. Assignment; Subcontracting

17.1. Subcontractor shall not assign this Agreement or any right or liability relating to it or subcontract the whole or any part of the Subcontractor's Work without the written consent of Model. At Model's option and in Model's sole and absolute discretion, any assignment made without the written consent of Model is void. No consent to or acceptance by Model of any assignment or subcontract shall relieve Subcontractor of any of its responsibilities under this Agreement.

18. Applicable Law

18.1. This Agreement shall be construed in accordance with and governed by the internal substantive law of the State of Ohio regardless of the laws that might otherwise govern under principles of conflict of laws.

18.2. **Non-waiver:** The waiver by either party hereto of any breach of any provision of this Agreement shall not be construed as or constitute, a continuing waiver, or a waiver of any other breach of any provision of this Agreement.

19. Joint Drafting

19.1. The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

20. Entire Agreement

20.1. This Agreement constitutes the entire agreement between the parties hereto and supersedes any and all prior or contemporaneous written or oral agreements between the parties hereto with respect to the subject matter hereof. Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than Model and Subcontractor. This Agreement may not be amended or modified except by a written change order duly executed by the parties hereto.

21. Notice

21.1 Each notice or other communication required or contemplated to be given hereunder shall be in writing

and shall be conclusively deemed to be given or made or communicated if sent by United States registered or certified mail, postage prepaid, return receipt requested; deposited with a nationally recognized overnight delivery service, postage prepaid; or by electronic mail or facsimile transmission (with a confirmation copy to follow by any of the other means of delivery set forth above) and addressed:

To Model: 1826 Race Street
 Cincinnati, Ohio 45202
Attn:
 E-mail: @modelgroup.net
 Fax: 513-559-4578

To Subcontractor: _____

 E-mail: _____
 Fax: _____

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.

SUBCONTRACTOR:	GENERAL CONTRACTOR:
	MODEL CONSTRUCTION, LLC
Date:	Date:
Authorized Signature:	Authorized Signature:
Printed Name:	Printed Name: Robert Keppler
Title:	Title: President of Construction
	1826 Race Street Cincinnati, Ohio 45202
Phone:	Phone: 513 559 0048
Fax:	Fax: 513 559 4578