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SUBCONTRACT AGREEMENT

GARRARD FRAMING & DRYWALL, INC
5578 Commercial Blvd, Winter Haven, FL 33880
PH: (863)967-3992 FAX: (863)968-1816
License #CBC 1258795

Agreement made this 23th day of March 2012.

Between the **Contractor:** **Garrard Framing & Drywall, Inc**
9942 Currie Davis Dr., Suite A
Tampa, FL 33619

And the **Subcontractor:** **Royal Construction Group**
5891 S. Millitary Trail Suite 5A
Lake Worth, Fl. 33463
PH# 786-238-2628

The **Project:** **Florida Presbyterian homes**
901 Lakeside Ave.
Lakeland, FL 33803

The **Architect:** **MBA Architects**
4625 east bay drive
Clearwater, Fl. 33764

The Scope: Provide all Labor, Materials and Equipment for a complete installation of all Insulation required for the project.

For the consideration expressed herein, Contractor and Subcontractor do hereby covenant and agree as follows:

ARTICLE 1
THE CONTRACT DOCUMENTS

- 1.1 The Contract Documents for this Subcontract consists of this Agreement, all documents as listed in Article 12.4 and all modifications issued after execution of the Agreement between the Owner and the Contractor and agreed upon by parties to this Subcontract. These items are as fully a part of this Subcontract as if attached to this Agreement or repeated herein.
- 1.2 Subcontractor hereby acknowledges that he has received, read and is thoroughly familiar with said plans and specifications and that the methods, sequences and procedures described therein for the Work are agreed upon and correct.
- 1.3 Both copies of this Agreement must be signed and returned within ten (10) days of the above Subcontract date. A signed acknowledgment copy will be forwarded to the Subcontractor within ten (10) days thereafter. This Agreement is subject to cancellation if not signed and returned within ten (10) days of the above Subcontract date.
- 1.4 All terms, conditions, stipulations, covenants, promises, and agreements contained in this contract shall be considered severable in the event one or more of them shall be determined hereafter by a court or competent jurisdiction to be invalid. Contractor and Subcontractor intend that this contract, except for any portion thereof so declared invalid, shall be considered valid in the event it is otherwise sufficiently definite and certain.
- 1.5 Any notices required or permitted hereunder shall be deemed to have been given by facsimile or when deposited in the United States mail, certified mail, return receipt requested, addressed to the Contractor at the address stated above and addressed to the Subcontractor in care of his representative on the job site or at the address stated above.
- 1.6 The following definitions shall apply to and control all interpretations of this Agreement:
- A. **OWNER** – shall mean the person, firm, corporation, municipality, county, department, or agency of State or federal Government primarily and originally contracting with the Contractor for the performance of the Work and shall include any assignee or successor Owner.
 - B. **PLAN AND SPECIFICATIONS** - shall mean all plans, specifications, addenda, drawings, general conditions, special conditions and instructions of the Architect, Engineer, or Owner and any subsequent changes and amendments thereto, as are maintained in the office of the contractor or Owner, and all such documents are hereby fully incorporated into this Agreement by reference.
 - C. **SUBCONTRACTOR** – shall mean the above named Subcontractor, its agents, successors and assigns and its surety under any Bond(s) provided pursuant to Article 4.
 - D. **ARCHITECT OR ENGINEER** – shall mean the architect or engineer or other representative of the Owner under whose supervision, direction or inspection of the work is required to be done by the terms of this Agreement and the prime contract between the Owner and Contractor.
 - E. **WORKSITE or JOBSITE** – shall include all buildings and structures on this Project, including but not limited to, outside utilities, sidewalks, landscaping, roads, streets, and other items which are the subject or objects of construction provided for in the prime contract between the Owner and Contractor, and surrounding area as specifically designated by Contractor as the Worksite or Jobsite.
 - F. **INTEREST** – shall mean interest compounded at the highest rate allowable by law for all sums of money expended by Contractor by reason of Subcontractor's failing to perform all or any part of its obligations under this Agreement. Contractor shall be entitled to interest prior to and after rendition of a judgment against Subcontractor and or/its surety, if applicable, regardless of whether any damages sustained by Contractor are liquidated and with said interest beginning to accrue from the date of actual expenditures by Contractor.
 - G. **PRIME CONTRACT** – shall mean all written, typed, or printed agreements between the Owner, Architect or Engineer, or their agents and Contractor, including but not limited to, plans and specifications, as herein defined, and any progress or construction schedules and amendments thereto.

ARTICLE 2
THE WORK

- 2.1 The Subcontractor shall furnish all labor, materials, scaffolding, equipment, machinery, tools, apparatus, transportation, all required shop drawings and samples and shall perform all portions of the Work as shown and described in the plans and specifications defined herein and as detailed in Article 12.5.

ARTICLE 3
THE CONTRACT SUM

3.1 The Contractor shall pay the Subcontractor in current funds for the performance of the Work, subject to additions, deductions, set-offs, or retentions in accordance with this Agreement, the Contract Sum of:

Ground Floor (Hanging, Finishing and Texture)
Nine Thousand Nine Hundred Ninety Four Dollars & no/100-----\$9,994.00
First Floor (Hanging, Finishing and Texture)
Ten Thousand Nine Hundred Ninety Nine Dollars & no/100-----\$10,999.00
Second Floor (Hanging, Finishing and Texture)
Eleven Thousand Seven Hundred Twenty Two Dollars & no/100-----\$11,722.00

See scope at section 12.5.1

ARTICLE 4
PAYMENT AND PERFORMANCE BONDS

4.1 A Payment and Performance Bond is not required on this project.

ARTICLE 5
PROGRESS PAYMENTS

5.1 As the Work progresses, Contractor shall pay Subcontractor ninety percent (90%) of the value of completed work done from month to month in accordance with all provisions of Article 5.

5.2 Subcontractor shall submit to Contractor's office, Applications for Payment, in the manner and form as directed or approved by the Contractor, by the 15th and last day of the month for work to be completed through the last day of the prior month and 15th of the same month. Applications not received by the 15th and last day of the month shall be processed for the following month.

5.3 A Payment Requisition Breakdown or Schedule of Values of the various parts of the Work aggregating the total sum of this Subcontract shall be submitted within fifteen (15) working days after execution of this Agreement, and approved by Contractor, and shall be submitted each month, with Application for Payment, indicating percentage completed. Subcontractor shall provide Contractor with Subcontractors Federal Tax Identification Number before any payments will be made.

5.4 Upon approval of Application for Payment by Contractor, Subcontractor shall be paid monies due, provided: (a) Subcontractor has furnished to Contractor prior payments' release of Liens for Subcontractor and for all Subcontractor's suppliers and Subcontractors who have filed "Notice to Owner"; and, (b) Subcontractor has fulfilled all other responsibilities per this Agreement.

5.5 Any payments made hereunder shall not in any way be construed as an acceptance by Contractor of the performance of this Agreement by Subcontractor or acceptance of materials and equipment supplied to the Project and Contractor reserves the right at any time to require that Subcontractor comply with the plans and specifications irrespective of whether monies for said work have been paid to Subcontractor. The Contractor also reserves the right at its discretion to issue a joint check to the Subcontractor and to any supplier or debtor of Subcontractor who may claim a right to a mechanic's lien and upon issuance of the check; Subcontractor and said supplier or debtor shall issue a release of lien or bond rights. No agreement by Contractor to issue joint checks shall be construed to bind Contractor to any said supplier or debtor in the event of a breach by Subcontractor or termination of this Agreement.

5.6 At the discretion of the Contractor, the percentage may be reduced to provide an incentive or reward for exceptional performance and timeliness of work by the Subcontractor.

5.7 Subcontractor shall, as often as requested by the Owner or by the Contractor, furnish a sworn statement showing all parties who furnish labor and materials to Subcontractor their names and addresses and the amount due or to become due to each. Like statements may be required from any Subcontractor to the Subcontractor. Subcontractor shall furnish to the Contractor written evidence upon request of the payment of all bills and expenses incurred for labor, services, equipment and materials used by the Subcontractor and written releases from all persons, firms or corporations that may have furnished to said Subcontractor any services, equipment, labor and materials, on or for the aforesaid building or construction Project, including releases of liens and bond rights from all persons, firms, corporations that may have furnished to said Subcontractor any

services, equipment, labor and materials, or may have in any way had dealings and agreements in connection with the Work of the Subcontractor under this Agreement.

**ARTICLE 6
FINAL PAYMENT**

- 6.1 Final payment, constituting the entire unpaid balance of the Contract Sum excluding retainage, shall be due when the Work described in this Agreement is fully completed in accordance with Contract Documents and is approved for payment by the Architect and Owner.
- 6.4 Before issuance of final payment, excluding retainage, the Subcontractor shall submit evidence satisfactory to the Contractor that all payrolls, bills for material and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied.
- 6.4 Payment of retainage shall be made upon Architect's certification of Subcontractor's satisfactory completion of all items under Subcontractor's Work as itemized on the final punch list to be completed by the Contractor.
- 6.4 Subcontractor shall present to Contractor a Final release of Lien for the entire Contract Sum immediately upon receipt of balance of Contract Sum, and, at Contractor's option, an affidavit stating that all of the Subcontractor's indebtedness connected with the Subcontractor's Work has been satisfied.
- 6.5 It is specifically agreed by Subcontractor that a material matter of inducement and consideration for the award of this Subcontract by the Contractor is the Subcontractor's agreement that it will not look to the Contractor or its surety for payments hereunder unless and until the Contractor has received payment for Subcontractor's Work from the Owner and further, that said payment by the Owner is a specific condition precedent to Subcontractor's right to payment from the Contractor or its surety. An additional condition precedent to final payment shall be the furnishing of a final and complete release of lien and/or release of bond rights and the Subcontractor or any of its laborers, material men or suppliers may have by reason of any work performed by Subcontractor hereunder. If at any time there shall be evidence of any liens or claims for which Contractor or its surety or the Owner may become liable and which may be chargeable to the Subcontractor, the Contractor shall have the right to retain out of any payment due or to become due an amount sufficient to indemnify Contractor, its surety, or the Owner against such lien or claim and to charge or deduct all the costs of defense, including interest, attorney's fees, court costs, appellate attorney's fees, and appellate court costs and payment thereof if directed by court or judgment. Should any claim or liens develop after all payments are made, Subcontractor shall immediately refund to Contractor all monies that Contractor may be compelled to pay in discharging such claim or lien, including interest, attorney's fees, court costs, appellate attorney's fees, and appellate court costs incurred by the Contractor in satisfying such claim or lien, or incurred by the Contractor in collecting said monies from the Subcontractor.

**ARTICLE 7
TIME COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 7.1 The Work to be performed under this Subcontract shall be commenced upon five (5) days notice by Contractor and shall be substantially completed in accordance with Contractor's Job Progress Schedule.
- 7.3 It is expressly agreed that time is of the essence for all of Subcontractor's duties and obligations under this Agreement and that the payment of the consideration herein expressed is executory and conditioned upon proper and timely completion of this Agreement and all the Work described herein.
- 7.3 No extension of time will be valid without the Contractor's written consent after claim is made by Subcontractor in accordance with Article 9.9.

**ARTICLE 8
INSURANCE**

- 8.1 Within fifteen (15) days from the date hereof, the Subcontractor shall duly secure and pay for insurance that, at a minimum, will protect both the Contractor and the Subcontractor from any and all claims for personal injury, death, property damage, worker's compensation, and any and all other risks arising from or in any way relating to the Work, whether caused by acts or omissions of the Contractor or Subcontractor or otherwise, including any and all claims by the Subcontractor's employees. The insurance called for above shall include but not be limited to Worker's Compensation, Automobile and Commercial General Liability insurance (including but not limited to Completed Operations coverage) in such amounts and on such terms as required by the Contractor, and such other insurance coverage as may be required by the Contract Documents or the Contractor. The minimum required Subcontractor Commercial General Liability Insurance coverage will be \$1,000,000 with a \$2,000,000 Aggregate, Automobile Limits will be \$1,000,000 CSL and Workers Compensation Limits will be \$500,000/\$500,000/\$500,000. The insurance company providing the insurance shall be a responsible insurer with an A.M. Best rating of A or better and satisfactory to Contractor. Contractor and Owner shall be named as Additional Insured on the above policies and will also extend Additional Insured status under the Completed Operations section, of the General Liability policy provided. The Subcontractors General Liability policy will also be identified by endorsements to be Primary with a Non Contributory position and Waiver all Rights of Subrogation. The insurance policy shall provide that coverage shall not be cancelled without thirty (30) days prior written notice to Contractor. If your company utilizes an employee leasing company for hired labor for any work performed on this project, your company must be listed as an alternate employer and/or a Named Insured on the Certificate of Insurance provided to our company.
- 8.2 Within fifteen (15) days from the date hereof, Subcontractor shall deliver to Contractor proof of the insurance required in section 8.1 in the form of a certificate of insurance duly authorized and issued by the insurer. The certificate of insurance shall name the Contractor and Owner as additional insured and shall provide that the insurance coverage will not be cancelled without thirty (30) days prior written notice to Contractor.
- 8.3 The Contractor shall not be liable for any loss or casualty incurred or caused by the Subcontractor. The Subcontractor assumes all risk of loss for all of the Work under this Subcontract regardless of whether the Subcontractor has previously been paid for same.

**ARTICLE 9
SUBCONTRACTOR**

9.1 Rights and Responsibilities:

- 9.1.1 The Subcontractor shall be bound to the Contractor by the terms of this Agreement and, to the extent that provisions of the contract documents between the Owner and Contractor apply to the work of the Contractor as defined in this Agreement, the Subcontractor shall assume toward the Contractor all the obligations and responsibilities which the Contractor, by those documents, assumes toward the Owner and the Architect.
- 9.1.2 The Subcontractor shall have the benefit of all rights, remedies, and redress against the Contractor, which the Contractor has against the Owner, except as otherwise stated in this Agreement.
- 9.1.3 Neither any payment herein provided to be paid to Subcontractor, nor any other right nor interest of Subcontractor hereunder, shall be assigned or transferred without Subcontractor first having received the express written consent of the Contractor. In the event Contractor shall agree to any such transfer or assignment, Contractor specifically reserves the right to renegotiate or to add any additional provisions as may be necessary under the circumstances, and under no circumstances shall any such transfer or assignment relieve Subcontractor of any of its obligations under this Agreement. Contractor may withhold its consent to only such transfer of assignment at its sole discretion.
- 9.1.4 The Subcontractor shall not enter into any contract with the Owner relating to the Project without the Contractor's prior written consent.

9.2 Execution and Progress of the Work:

- 9.2.1 Subcontractor shall submit shop drawings, submittal data, brochures and samples to Contractor in as many duplicate copies as Contractor may require and no later than ten (10) days after notification therefore from Contractor.
- 9.2.2 The Subcontractor shall cooperate with the Contractor in scheduling and performing his Work to avoid conflict, delay, or interference with the work of others.

- 9.2.3 Subcontractor agrees to immediately prepare for performance of the Work hereunder and to be prepared to begin such Work as soon as instructed by Contractor. Subcontractor will carry on said work promptly and efficiently and at speed that will not cause any delay in the progress of Contractor's work or other phases of work being carried on by other Subcontractors employed by Contractor. If, in the opinion of the Contractor, the Subcontractor falls behind in the progress of the Work to be performed hereunder, the Contractor may direct the Subcontractor to take such steps as the Contractor deems necessary to improve the rate of progress, including requiring Subcontractor to increase the number of shifts, overtime operations, days of work, amount of workmen and/or amount of equipment, and to submit for approval a schedule demonstrating the manner in which the required rate of progress may be regained, all without any additional costs whatsoever to the Contractor. Failure of Subcontractor to immediately comply with Contractor's scheduling requests provided herein shall be considered to be an event of material default hereunder for which Contractor may assert any and all remedies as provided herein. Should Subcontractor in any way cause delay to the Contractor, to any other Subcontractor on the Project, or to any portion of the work described in the prime contract, Subcontractor shall be liable to the Contractor for any and all damages sustained by Contractor as a result thereof, including, but not limited to, all consequential damages and costs of continued supervision, job overhead, insurance, project facilities and other ongoing, fixed costs. In addition, in the event Owner shall assess any delay damages against Contractor, either pursuant to a valid liquidated damage provision in the prime contract or otherwise, Contractor shall have the right and option to deduct any and all such assessments that are directly attributable to delays caused by subcontractor from any amounts that may be otherwise owing to Subcontractor under this Agreement. Permitting Subcontractor to continue after the time to complete the Work has expired shall not be construed as a waiver of damages for noncompliance with time requirements provided herein.
- 9.2.4 Subcontractor shall maintain a competent and experienced superintendent or foreman on the Project at all times, with authority to carry out directives of the Contractor relating to the Subcontractor's work and responsibility. Subcontractor must at all times maintain, keep and supply adequate tools, appliances, equipment and material and employ a sufficient number of properly skilled workmen to efficiently and promptly execute all Work required hereunder. Subcontractor agrees to promptly pay for all materials furnished to or used by Subcontractor and shall compensate each workman used on the Project on a weekly basis and if required by Contractor, shall obtain and furnish a weekly signed receipt from each workman, certified by affidavit to Contractor as to the date and amount of payment, number of hours paid for, and the days on which the said work was performed, together with two (2) copies of the payroll certified by affidavit.
- 9.2.5 The Subcontractor shall furnish periodic progress reports on the Work as requested by Contractor, including information on the status of material and equipment under this Subcontract, which may be in the course of manufacture or delivery.
- 9.2.6 The Subcontractor agrees that the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and approval and on mutually satisfactory terms.
- 9.2.7 The Subcontractor shall pay for all materials, equipment, and labor used in, or in connection with, the performance of this subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.
- 9.2.8 All Work is to be performed subject to the final approval of the Architect or Engineer, and his decisions, made at his sole discretion, shall constitute final approval of the interpretation of the intent of the plans and specifications with regard to the scope of this subcontract, and with regard to all labor, services, equipment and materials to be supplied pursuant to this subcontract. Subcontractor shall conform to and abide by any additional specifications, drawings or explanations furnished by Architect or engineer to illustrate the work to be performed.
- 9.2.9 The Subcontractor, before proceeding with any work under the Subcontract, will accurately check and verify all previous and surrounding work done by other and determine the correctness of same. The Subcontractor shall field measure all work relating to his Work. The failure of the Subcontractor to detect and disclose any existing discrepancies or nonconformities in work done by others and to report same to the Contractor, in writing, before commencing his Work shall relieve the Contractor of any and all responsibility for same, and the Subcontractor shall be responsible and liable for all resulting damages, costs, and expenses arising as a result of discrepancies and nonconformities which should have been discovered by the Subcontractor.
- 9.2.10 All labor used throughout the Work by Subcontractor shall be acceptable to the Owner and Contractor and of a standing or affiliation that will permit the work to be carried on harmoniously and without delay and that will in no case or under any circumstances cause any disturbance, interference or delay to the progress of the work or any other work carried on by the Owner or Contractor in any town or city in the United States. Subcontractor agrees that no persons under its employ shall bring or consume any intoxicating beverages or drugs on the jobsite nor shall the same undertake any annoying, offensive or work disturbing activities on said site.

9.3 Laws, Permits, Fees and Notices:

9.3.1 Subcontractor agrees to comply with all local, State and federal laws, building codes and ordinances, all Federal OSHA and EEO regulations and U.S. or international trade or patent agreements, and such other labor laws as may be applicable, and to comply with all other laws, ordinances and codes and to reimburse and save the Contractor harmless from all claims, demands, causes of action and fines and pay for all necessary official licenses or permits for carrying on the Work described herein.

Subcontractor hereby represents and warrants unto Contractor that is has in fact secured and obtained all necessary and applicable licenses and all temporary and permanent permits not covered by the building permit to carry on the Work and further, agree that Federal and State tax laws, social security laws and unemployment compensation laws are a part of this Agreement and are a part of Subcontractor's obligations hereunder as though fully set forth herein. Any and all transportation tax, sales tax, royalties and any other tax that might accrue through purchase of materials or amounts paid for labor by Subcontractor or occasioned by the performance of this Agreement shall be paid in full by Subcontractor.

9.4 Work of Others:

9.4.1 In carrying out his Work, the Subcontractor shall take necessary precautions to protect the work of other trades from damage caused by his operations.

9.4.2 The Subcontractor shall cooperate with the Contractor and other Subcontractors whose work might interfere either the Subcontractor's Work, and shall participate in the preparation of coordinated drawings in areas of congestion as required by the contract documents, specifically noting and advising the Contractor of any such interference.

9.5 Safety Precautions and Procedures

9.5.1 The Subcontractor shall take all reasonable safety precautions with respect to his Work and shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public authority for the safety of persons or property.

9.5.2 The Subcontractor shall comply with all safety rules and measures that may be initiated by the Contractor or that may be required by the Contract Documents.

9.5.3 Subcontractor shall abide by all safety rules and measures as outlined in Contractor's Site Safety Program, a copy of which is available at the project site and from the Contractor upon request.

9.5.4 Subcontractor shall reimburse and indemnify Contractor for all costs, fines, penalties, expenses and liability incurred by Contractor or Owner as a result of the failure of Subcontractor, its agents, employees, suppliers or Subcontractors, to comply with applicable safety laws, rules, measures, regulations and orders.

9.5.5 The Subcontractor shall report immediately to the Contractor any injury to the Subcontractor's employees at the site of the Project.

9.6 Cleanup:

9.6.1 The Subcontractor shall at all time keep the premises free from accumulation of waste materials or rubbish arising out of the operations of this subcontract and in accordance with additional instructions from Contractor's Job Superintendent.

9.6.2 Subcontractor acknowledges that waste materials present a real danger to the safety of Subcontractor's employees and the employees of others working at the work site and that part of Subcontractor's operations is the constant removal of waste material to keep the work site safe for Contractor, Owner, Subcontractor and others.

9.6.3 Should the Subcontractor fail to remove all his rubbish and debris from within and around the work site and building as instructed by this Subcontract Agreement or by the Job Site Superintendent, the Contractor shall have the right to perform the work with his own forces and charge the expense to the Subcontractor and deduct the expenses from the Contract Sum.

9.7 Warranties:

9.7.1 Subcontractor shall provide a safe and sufficient facility at all times for inspection of the Work by Contractor, Architect or Engineer or their authorized representative. Subcontractor shall, within twenty-four hours of receiving written notice from Contractor, proceed promptly to take down all portions of the Work or remove from the work site all materials which the Architect or Engineer shall condemn or fail to approve and, shall promptly make such material or work good or according to standard as set forth in the plans and specifications as interpreted by said Architect, Engineer or their representative. Subcontractor hereby fully guarantees and warrants to the Contractor, Owner and Architect or Engineer, for a period of one (1)

year from the date of final acceptance of the work by the Owner (as the term may be defined in the plans and specifications) or any longer period of time set forth in the prime contract or under general law, that all work and materials furnished under this Agreement shall be good and workmanlike quality, without any faults or defects, in strict conformance with the Contract Documents and free from any cause which prevents the work and materials furnished by Subcontractor from functioning in a reasonably expected manner or fulfilling their intended purpose. Subcontractor further fully guarantees and warrants to the Contractor, Owner and Architect or Engineer that all materials and equipment furnished by the Subcontractor, or pursuant to this Agreement, shall be new, unless otherwise specified in writing by the Subcontractor and approved in writing by the Contractor. All work and materials furnished under this Agreement not conforming to the above requirements, including substitutions not properly approved and authorized, may be considered by Contractor, in its discretion, to be defective. Nothing contained in this paragraph or any portion of this Agreement shall in any way be construed or considered as an attempt by Subcontractor or Contractor to limit or shorten any applicable statutes of limitation relating to the breach of this Agreement, the negligent undertaking of any obligation contained herein or otherwise.

- 9.7.2 Subcontractor shall furnish the Contractor all as-built drawings and/or construction manuals together with any other documents required by all contract documents referred to hereunder and the furnishing of same shall be as additional condition precedent to Subcontractor receiving final payment hereunder. Subcontractor shall furnish and supply these documents within ten (10) days after receiving demand there fore, and upon the failure to so supply, Contractor shall have the right to engage any and all necessary persons to prepare same and shall be entitled to deduct the costs therefore, including overhead and profit hereinafter described, from any amounts due Subcontractor.
- 9.7.3 Subcontractor will supply as-built drawings with all notations and changes showing any deviation from the original plans and specification. Subcontractor will provide three copies of a full size plan detailing the as-built changes.
- 9.7.4 Subcontractor will furnish four copies of the manuals (more if required by the plans and specifications) provided by the manufacturer or supplier, in accordance with the provisions of article 9.7.1 above.
- 9.7.5 When applicable, the Subcontractor shall grant to the Contractor, the Owner and/or persons such that the Owner shall designate, the Developer, and each purchaser of a condominium unit, the warranties granted by the Contractor pursuant to Florida Statute 718.203 (1995), or any amendment to such section.
- 9.8 **Changes in the Work:**
- 9.8.1 Subcontractor shall make all alterations, furnish materials therefore and perform all extra work or omit any work Owner, Architect, or Contractor may require, without modifying this Agreement, at a reasonable addition to or deduction from the total payment to be paid to subcontractor hereunder. Any and all alterations or changes in the work described herein shall be made by Subcontractor only after having first received written authorization therefore from Contractor. Contractor shall not be liable to Subcontractor for any extra work or materials furnished without first obtaining said written authorization from Contractor.
- 9.9 **Claims of the Subcontractor:**
- 9.9.1 Should Subcontractor be delayed in the prosecution of the Work by the act, neglect or default of the Contractor, Owner or Architect, or by any damage caused by the elements, act of God, and/or any casualty for which Subcontractor is not responsible, then the time fixed for the completion of the Work pursuant to the terms of this Agreement shall be unilaterally extended by Contractor for a period equivalent to the time loss by reason of the cause aforesaid. No time extension shall become operative unless a claim therefore is presented in writing to Contractor within seventy-two (72) hours of the beginning of delay, and such claim is approved in writing by Contractor. Should Contractor refuse to approve such claim for extension of time, the matter shall be referred to the Architect or engineer for determination and his discretion shall be final and binding upon all parties thereto. The Subcontractor agrees that such extension of time for completing the Work precludes, satisfies and cancels any and all other claims or damage that Subcontractor may have or claim on account of such delay.
- 9.10 **Indemnification:**
- 9.10.1 Subcontractor agrees to defend, indemnify and hold harmless Contractor, Owner and Architect or engineer, and their agents and employees, from and against any claim, loss, costs, fines, penalties, expense or liability (including attorney's fees at trial and appellate levels), attributable to bodily injury, sickness, disease or death, or to damage to or destruction of property (including loss or use thereof), caused by, arising out of, resulting from or occurring in connection with the performance of the Work by Subcontractor, its Subcontractors, or their agents or employees, whether or not caused in part by the active or passive negligence or other fault of any party indemnified hereunder. Subcontractor's obligation hereunder shall not be limited by the provision of any worker's compensation or similar act. The obligations expressed in this paragraph shall also be the obligations of Subcontractor's surety under any bond provided under Article 4.

- 9.10.2 Should Owner or any other person assert a claim or institute a suit, action, or proceeding against Contractor involving the manner or the sufficiency of the performance of the Work of this subcontractor, Subcontractor shall upon request of Contractor promptly assume the defense of such claim, suit, action or proceeding at Subcontractor's sole expense, and Subcontractor shall indemnify and hold Contractor and its agents and employees harmless from and against any liability, claim, loss, damage, or expense, including attorney's fees and costs at trial and appellate levels and sales tax, if applicable, arising out of or related to such claim, suit, action or proceeding.
- 9.10.3 If any of the indemnification provisions recited in this Agreement are deemed to fall within the scope of Section 725.06, Florida Statutes (1995), or any amendment of such section, then the monetary limitation on the extent of indemnification for each of those provisions under this Agreement shall be limited to a sum equal to ten (10) times the total Contract Sum as provided herein. It is further agreed and acknowledged that Subcontractor has received from Contractor the sum of \$10.00 together with other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged by Subcontractor, which has been paid by Contractor to Subcontractor for each of the indemnification provisions set forth in this Agreement. It is further acknowledged and agreed that this provision is to be considered a part of the project's specifications, bid documents and Contract Documents.
- 9.10.4 Subcontractor agrees to turn over work done hereunder to Contractor in good condition and free and clear of all liens, claims, liability, patent infringements, loss, damage or injuries of any kind, nature and description, including interest, attorney's fees, court costs, appellate attorney's fees and appellate court costs for the prosecution or defense, resulting from or in any way arising out of the performance or failure to perform the Work by the Subcontractor, under this Agreement.

ARTICLE 10 CONTRACTOR

10.1 Rights and Responsibilities:

- 10.1.1 The Contractor shall be bound to the Subcontractor by the terms of this Agreement and to the extent that provisions of the contract documents between the Owner and Contractor apply to the Work of the Subcontractor as defined in this Agreement, the Contractor shall assume toward the Subcontractor all the obligations and responsibilities which the Owner, by those documents, assumes toward the Contractor, except as otherwise stated in this Agreement.
- 10.1.2 The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor, which the Owner has against the Contractor, except as otherwise stated in this Agreement.

10.2.0 Services Provided By the Contractor:

- 10.2.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing his Work to avoid conflicts or interference in Subcontractor's Work and shall expedite written responses to all submittals made by the Subcontractor. The Contractor shall notify Subcontractor of estimated date for Subcontractor to commence his Work to enable Subcontractor to plan and perform his work properly. The Subcontractor shall be notified promptly of any subsequent changes in the progress schedule and his expected commencement date.
- 10.2.2 Contractor shall not be liable to the Subcontractor for delay to Subcontractor's Work by act, neglect or fault of Contractor, Owner, the Architect or Engineer, or other Subcontractors, or by reason of fire or other casualty, or on account of riots, or strikes, or other combined action of the workmen or others, or on account of any acts of God, or on account of any circumstances caused or contributed to by the Subcontractor. Subcontractor's sole and exclusive remedy for delay to Subcontractor's Work shall be the extension of time to complete Subcontractor's Work as set forth in Section 9.9.1.
- 10.2.3 Where and when available, the Contractor, at his discretion, shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the work.

10.3.0 Communications:

- 10.3.1 The Contractor shall properly notify the Subcontractor in writing of all modifications to the contract between the Owner and the Contractor, which affect this subcontract and which were issued or re-entered into subsequent to the execution of this subcontract.
- 10.3.2 The Contractor shall not give instructions or orders directly to employees or workmen of the Subcontractor, except to Superintendents, Foremen, or other persons designated as authorized representatives of the Subcontractor.

10.4.0 Claims By The Contractor:

10.4.1 The Contractor may demand, setoff and recover damages from Subcontractor resulting from delays caused by the Subcontractor's breach or other non-compliance with terms of this Agreement or caused by the Subcontractor's negligent acts or failure to act in accordance with the terms of this Agreement. Should the delay be caused by more than one party, the actual damages shall be assessed proportionately against each responsible party. Actual damages shall include, but not be limited to any damages claimed by the Owner and Architect, and additional Contractor direct cost and overhead caused by the delay.

10.5.0 Contractor's Remedies After Subcontractor's Breach:

10.5.1 Subcontractor breaches this Agreement if Subcontractor: (1) fails to perform work hereunder; (2) in the opinion of Contractor, causes or threatens to cause delay in general progress of the building, structure or project; (3) fails to honor or abide by its guarantees and warranty set forth in Article 9.7.1; (4) in any manner breaches or fails to perform any of its obligations and undertakings herein; Or, (5) breaches any other agreement between Contractor and Subcontractor pertaining to this or any other construction project. If Subcontractor breaches this Agreement, then Contractor shall the right to any or all of the following remedies and courses of action:

- A. Investigate the cause of such breach and expedite same in any way or manner whatsoever
- B. Take charge of and complete the performance of this Agreement and the Work provided for herein
- C. Declare this contract to be breached by Subcontractor and renegotiate and re-execute contract or contracts for the completion or correction of the Work required to be done under this Agreement with such persons, firms or corporations as shall be necessary in the opinion of the Contractor. All losses, damages, and expenses, including interest, attorney's fees, court costs, appellate attorney's fees, and appellate court cost in the prosecution or defense of any action or suit incurred by or resulting to the Contractor or on the above account, or by reason of any other breach by Subcontractor hereunder, shall be borne by and charged against Subcontractor and its surety, including a ten (10%) percent overhead and a ten(10%) percent profit, and shall be the damages for breach of this Agreement and Contractor may recover on the bond(s) previously described, if any, and both Subcontractor and its surety, if any, agree to pay Contractor such losses, damages, expenses, interest, attorney's fees, court costs, appellate attorney's fees and appellate court costs, and including a ten (10%) percent overhead and ten (10%) percent profit.
- D. Notify the Subcontractor of a delay or threatened delay, allow the Subcontractor to attempt to cure said nonperformance or mis-performance and back charge Subcontractor for any damages sustained by Contractor as et forth in 10.4.1
- E. If Subcontractor has provided labor, services, or materials to any other project on which Contractor is the General Contractor, the Contractor is given the express right to withhold or retain payments otherwise due to Subcontractor on any of said other projects and shall have alien on any proceeds which may ultimately be owed to Subcontractor on said projects. This provision shall apply irrespective of whether Subcontractor is in privity with Contractor on such other projects. Furthermore, Contractor is given the express right to withhold and retain payments otherwise due to Subcontractor for work performed on this project in the event Subcontractor should be in default on other projects in which Contractor is the General Contractor which default has caused Contractor or the Owner to suffer damages. Contractor shall have the right to setoff or otherwise apply any payments withheld or retained from Subcontractor against the losses and damages which Contractor suffers or incurs on this or other projects as a result of Subcontractor's breach.
- F. Terminate this Agreement.

ARTICLE 11
TERMINATION

11.1 The Contractor reserves the right to terminate this Agreement and all rights and obligation hereunder, with or without cause and at the Contractor's sole discretion, at any time up seven (7) days prior to the scheduled actual commencement of Work by Subcontractor. In the event Contractor terminates this Agreement without cause prior to commencement of work, then Contractor shall reimburse Subcontractor for any reasonable out of pocket costs incurred for the actual preparation of performance of work under this Agreement. In the event Contractor shall terminate this Agreement after commencement of the work and whether with or without justifiable cause, the damages recoverable by Subcontractor, if any, shall be strictly limited to compensation to Subcontractor for services performed for services performed through the date of such termination, subject to setoff for damages, delays, and costs to Contractor and other monetary loss to Contractor caused by termination.

11.2 In addition to paragraph 11.1 above, Contractor shall be entitled to terminate this Agreement on the happening of any of the following events: (a) on Subcontractor's breach on the agreement as set forth in paragraph 10.5.1; (b) if contractor reasonably determines that its ability to perform the prime contract with the Owner or this Agreement with the Subcontractor is impaired for reasons beyond the Contractor's control. (c) if Owner breaches its prime contract with the Contractor; (d) if Contractor deems itself insecure as to Subcontractor's ability to perform Subcontractor's duties and obligations under this agreement; or (e) on the by or against Subcontractor of a voluntary or involuntary petition under any provision of the Federal Bankruptcy Code, as amended, or making of a general assignment for the benefit of Subcontractor's creditors, or is a receiver should be appointed on account of Subcontractor's insolvency, or otherwise, or the filing of a lien by the Internal Revenue Service against Subcontractor.

ARTICLE 12
MISCELLANEOUS PROVISIONS

12.1 In the event any of the Work shall be commenced or in any part undertaken by Subcontractor without its first having first executed this Agreement, and said subcontractor shall have received a copy of this Subcontract Agreement, then Subcontractor and Contractor until the full execution hereof, shall be deemed to have entered into an oral agreement, fully binding upon said parties and containing the identical provisions as are contained herein.

12.2 Contractor and Subcontractor, for themselves, their heirs, successors, executors, administrators and assigns, do hereby agree to the full performance of the covenants of this Agreement and agree that the provisions of this Agreement and all rights and remedies provided herein shall be construed under and governed by the laws of the State of Florida. In the event of suit by the Contractor or its surety against the Subcontractor or its surety or those with whom he deals on behalf of this Agreement, or suit by the Subcontractor or its surety or those with whom he deals on behalf of this Agreement, against the Contractor or its surety, then the venue of such suit shall be in Polk County, Florida and the Subcontractor hereby waives for itself, its surety or those with whom he deals on behalf of this Agreement whatever rights it may have in the selection of venue. Subcontractor and its surety do hereby further agree that the provisions concerning venue as contained herein shall be specifically binding upon them, notwithstanding the existence of any contrary venue provision as may be contained in any surety bond delivered to the Owner by Contractor and/or its surety.

12.3 This contract, including the terms and conditions contained herein, embodies the entire agreement between the parties and no other agreements, oral or otherwise, or instruments or papers, except those set forth in this Agreement shall be deemed to exist or to bind any of the parties hereto relating to the subject matter hereof. The paragraph headings and titles of this contract are no part of the Subcontract Agreement, having been inserted for convenience only, and shall have no effect upon the construction or interpretation of any part of this Subcontract Agreement.

- 12.5.1 "Scope of Work"** includes, but is not necessarily limited to, the following:
1. Labor to Hang all Drywall per plans and specs.
 2. Labor to Finish all Drywall per plans and specs (Level 4 Finish).
 3. Labor and Materials to Texture all Walls visible to site. Mockup will be required before work can be started.
 4. All work shall be performed in accordance with OSHA standards and maintain OSHA safety practices.
 5. Remove all debris on a daily basis and place in contractors dumpster appropriate for the material that is being disposed of. And clean the affected work area as directed by Contractor's superintendent or foreman.
 6. Be at the jobsite on time and work hours required to complete job. Normal working hours are 7:00am – 3:30pm.
 7. Provide properly skilled workmen to complete the product installation.

In witness whereof, the parties hereto have accepted this Agreement on the day and year first above written.

CONTRACTOR:

GARRARD FRAMING & DRYWALL, INC

By: _____

Print: _____

Date: _____

SUBCONTRACTOR:

C.Q. INSULATION, INC.

By: _____

Print: _____

Date: _____