THIS SUBCONTRACT, made on this date “Contract Date” by and between Horizon Construction Company (hereinafter "Contractor"), with an office and principal place of business at 415 Winkler Drive Alpharetta, GA 30004 and the "Subcontractor" (hereinafter collectively "Parties").

WITNESSETH:

WHEREAS, Contractor and the "Owner" have entered into a contract for the construction of the "Project", including all conditions to that contract (general supplementary and any other conditions), all drawings, specifications, schedule, and contract documents referenced in that contract, along with all addenda and modifications to that contract (hereinafter “Prime Contract”) insofar as they apply; and

WHEREAS, Contractor desires to subcontract certain work specified in the Contract Documents, and Subcontractor desires to perform said work at the prices and upon the terms and conditions hereinafter expressed;

WHEREAS, all documents comprising the prime contract are available for examination by Subcontractor, and Subcontractor represents that it has read and examined the prime contract and fully and completely understands them, or that it has had the full and complete opportunity to do so;

NOW, THEREFORE, in consideration of the mutual agreements herein expressed, the Parties contract, covenant and agree as follows:

# Subcontractor's Work

## Subcontractor shall perform all work and shall furnish all supervision, labor, materials, plant, hoisting, scaffolding, tools, equipment, supplies, licenses, permits and all other things necessary for the construction and completion of the work described in **ATTACHMENT F**, and work incidental thereto and reasonably inferable therefrom, in strict accordance and full compliance with the terms of this Subcontract, and to the satisfaction of Contractor and Owner (hereinafter "Work").

## With respect to the Work covered by this Subcontract, and except as expressly modified herein, Subcontractor shall have all rights which Contractor has under the Contract Documents, and Subcontractor shall assume all obligations, risks and responsibilities which Contractor has assumed towards Owner, and third parties as applicable, in the Contract Documents, and Subcontractor shall be bound to Contractor in the same manner and to the same extent that Contractor is bound to Owner or said third parties. In case of a conflict between this Subcontract Agreement and the Contract Documents as incorporated herein, the terms of this Subcontract Agreement shall prevail. To the extent relevant to their respective scopes of work, Subcontractor shall ensure that each of its subcontractors and suppliers are bound to the terms of this Subcontract Agreement and the Contract Documents.

## Subcontractor shall assume sole responsibility for and shall perform, or cause to be performed, all special inspections and testing required by any applicable building code, regulations, or the Contract Documents relative to the Subcontractor’s Scope of Work. To the fullest extent permitted by law, Subcontractor shall be liable to Contractor for any and all liability, costs, expenses, fines, penalties, and attorney’s fees resulting from its failure to perform such duties.

## Before starting work you shall examine work previously installed and immediately report to Contractor’s office any visible defects or conditions that would adversely affect the quality and/or completion of this work. It shall be assumed all conditions are acceptable if no such report is received.

# Payment

## Contractor shall pay Subcontractor for performance of the Work, subject to additions and deductions by written change order, the total sum of the "Subcontract Price".

## Partial payment shall be due Subcontractor in the amount of 100% of the value of the Work in place less 10% retainage if received by Contractor at the Alpharetta, Georgia office via fax, email or mail no later than the 25th of each month, and for which payment has been made to Contractor by Owner, payment will be released by the 10th of the following month. If the Contract Documents allow Contractor partial payments for stored materials, partial payments shall also be due Subcontractor in the amount of 100% of stored materials less 10% retainage for which payment has been made to Contractor by Owner. Within fifteen (15) days of execution of the Subcontract, and prior to submission of any payment application, Subcontractor shall submit a breakdown of the total Subcontract Price in a form and detail acceptable to Contractor. In the event Contractor disapproves said breakdown, Contractor shall establish a reasonable breakdown which shall serve as the basis for partial payments.

## Payment applications shall include a list of all vendors and/or sub-subcontractors, with corresponding contact information, which performed work or provided materials to the Project during the payment application period. All vendors and sub-subcontractors shall produce current Project accounting statements for the Project to be attached to Subcontractor’s payment application. Subcontractor’s monthly payment application shall not be approved without this back-up. Material men/supplier lien waivers shall be provided for all vendors and/or sub-subcontractors before payments are made.

## Partial payments shall be due seven (7) days following receipt of payment from Owner by Contractor. No partial payment made under this Subcontract shall be considered an acceptance of the Work in whole or in part. All material and Work covered by partial payments shall become the property of Contractor, or, if the Contract Documents so provide, the property of Owner immediately upon approval of payment; however, this provision shall not relieve Subcontractor from its responsibility for all Work as provided in Article 4.

## Subcontractor shall not apply for payment of any sums on account of Work performed by any sub-subcontractor or vendor unless it intends to immediately pay such sums to them. The Subcontractor shall pay any amounts to its sub-contractors or vendors whether for labor performed or materials furnished within thirty (30) days after the Subcontractor receives payment from Contractor which encompasses labor or material furnished by such sub-contractor or vendor. After the first partial payment hereunder, Contractor shall have the right to withhold any subsequent partial payments until Subcontractor submits evidence satisfactory to Contractor that all previous amounts owed in connection with performance of this Subcontract have been paid. In addition to the requirements for payment in the Contract Documents, as requested by Contractor, Subcontractor may be required to furnish with any payment application (a) an affidavit stating that all obligations directly or indirectly related to any payment have been paid, (b) a waiver of lien rights and claim rights under any payment surety bond provided by Contractor, for all work performed on and material provided to the Project through the date of said payment application, all in a form acceptable to Contractor,and (c) certified copies of payrolls of Subcontractor and its subcontractors.

## Final payment, including any retainage withheld under Paragraph 2.b., shall be made after (i) Subcontractor's Work has been accepted by Owner and Contractor, (ii) execution and delivery of a complete and final release of Contractor, Owner and Contractor's surety, if any, and a waiver of lien rights, or a release of any filed liens, in a form acceptable to Contractor from all persons or entities furnishing labor and/or materials in the performance of the Subcontract, (iii) satisfactory proof of payment of all amounts owed by Subcontractor in connection with this Subcontract has been provided, (iv) written consent of Subcontractor's surety has been received, (v) the Subcontractor's Work is complete, (vi) Subcontractor has provided warranties required by the Contract Documents, (vii) submission of such other documents or instruments as Contractor may reasonably require or which are required by the Contract Documents, (viii) production of proof that the insurance coverage required by this Contract and Exhibit D has been procured and is in force and (ix) Contractor has been paid in full by Owner for the Subcontractor's Work. Final payment shall constitute a waiver of all claims by Subcontractor arising out of the Work or Subcontract.

## Subcontractor accepts sole and exclusive liability for all taxes and contributions required of Subcontractor by federal, state or local laws or regulations, including, without limitation, the Federal Social Security Act and the Unemployment Compensation Law or similar laws in any state with respect to the employees of Subcontractor and the performance of the Work. Taxes and insurance include, but are not limited to, sales, use, social security, unemployment insurance, workmen’s compensation insurance and applicable withholding taxes.

## If due cause is determined, Contractor reserves the right to issue joint checks to Subcontractor and their vendors, suppliers, and/or material men.

## Contractor may withhold from any payment, including final payment, such amount as Contractor, in its discretion, deems reasonably necessary to protect itself against any actual or potential liability (including attorney's fees and costs) or damage directly or indirectly relating to the Subcontract arising from, or alleged to arise from, any act or omission by Subcontractor, regardless of whether or not the Owner has actually withheld payment from the Contractor.

# Subcontractor's Liability

## Subcontractor hereby assumes the entire responsibility and liability for all Work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the entirety of the Work by Owner. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefor, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's cost, subject only to the extent that any net proceeds are payable under any builder's risk property insurance that may be maintained by Owner or Contractor, if any.

## Subcontractor shall be liable to Contractor for all costs Contractor incurs as a result of any failure of Subcontractor, or any of its suppliers or subcontractors of any tier, to perform.

## To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the Contractor, Owner and their respective officers, directors, employees and agents (“Indemnified Parties”) from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities, (including all costs reasonable attorneys' fees, consequential damages, and punitive damages), arising out of or resulting from, or alleged to arise out of or arise from, the performance of Subcontractor's Work under the Subcontract, whether such claim, damage, demand, loss or expense is attributable to bodily injury, personal injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; but only to the extent attributable to the negligence of the Subcontractor or any entity for which it is legally responsible and; regardless whether the claim is presented by an employee of Subcontractor. Such indemnity obligation shall not be in derogation or limitation of any other obligation or liability of the Subcontractor or the rights of the Contractor contained in this Subcontract or otherwise. This indemnification shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under any workers' compensation acts, disability benefits acts or other employee benefits acts. This indemnification shall be in addition to any indemnity liability imposed by the Contract Documents, and shall survive the completion of the Work or the termination of the Subcontract.

## Subcontractor's assumption of liability is independent from, and not limited in any manner by, the Subcontractor's insurance coverage obtained pursuant to Article 4, or otherwise.

# Subcontractor's Insurance

## Prior to commencing the Work, Subcontractor shall procure, and thereafter maintain, at its own expense, until final acceptance of the Work or later as required by the terms of the Subcontract, insurance coverage required by the Contract Documents and this Subcontract. At a minimum, the types of insurance and minimum policy limits specified in **ATTACHMENT B** shall be maintained in a form and from insurers acceptable to Contractor. All insurers shall have at least an A- (excellent) rating by A.M. Best and be qualified to do business in the jurisdiction where the Project is located.

# Time of Performance

## Subcontractor will commence Work when directed by Contractor and Subcontractor will proceed with the Work in a prompt and diligent manner in accordance with the Project Schedule, attached hereto as **ATTACHMENT D**, which may be amended from time to time by Contractor. TIME IS OF THE ESSENCE. Subcontractor shall be entitled to additional compensation for compliance with schedule amendments only to the extent, if any, that Contractor receives reimbursement from the Owner.

## Subcontractor shall submit a detailed schedule for performance of the Subcontract, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents and with Paragraph 6.a. above. Contractor may, at its sole discretion, direct Subcontractor to make reasonable modifications and revisions in said schedule.

## Subcontractor will coordinate its Work with the work of Contractor, other subcontractors, and Owner's other subcontractors, if any, so no delays or interference will occur in the completion of any part or all of the Project.

# Changes and Claims

## Contractor may, at any time, unilaterally or by agreement with Subcontractor, and without notice to the sureties, make changes in the Work. Any unilateral order, or agreement, under this Paragraph 6.a. shall be in writing, unless an emergency requires Subcontractor to proceed without a written order. Subcontractor shall immediately perform the Work as changed without delay.

## Subcontractor shall submit in writing to Contractor, along with substantiating evidence deemed satisfactory by Contractor, any claims for adjustment in the Subcontract Price, schedule or other provisions of the Subcontract claimed by Subcontractor for changes directed by Owner, or for damages for which the Owner is liable, or as a result of deficiencies or discrepancies in the Contract Documents (“Owner Claims”), at least five (5) business days prior to the time specified in the Contract Documents, otherwise such claims are waived. Contractor shall process said Owner Claims according to the provisions of the Contract Documents so as to protect the interests of Subcontractor and others including Contractor. Subcontract adjustments shall be made only to the extent that Contractor receives relief from or must grant relief to Owner and then only based on Subcontractor's allocable share of such relief. Subcontractor's allocable share shall be determined by Contractor, after allowance of Contractor's normal overhead, profit and other interest in any recovery, by making a reasonable apportionment, if applicable, among Subcontractor, Contractor and other subcontractors or persons with interests in the adjustment. In no event shall the Contractor become or be liable to the Subcontractor on account of any such Owner Claims in excess of the amount actually received by Contractor from Owner on account of such claim. It is expressly acknowledged that receipt of payment by Contractor from Owner on account of any such Subcontractor's Owner Claims is an express condition precedent to any obligation of Contractor to pay such claims. This paragraph will also cover other equitable adjustments or other relief allowed by the Contract Documents.

## For changes ordered by Contractor independent of Owner or the Contract Documents, Subcontractor shall be entitled to an equitable adjustment of the Subcontract Price or Project Schedule, or both, to the extent that impact can be substantiated to the Contractor's satisfaction.

## Pending resolution of any claim, dispute or other controversy, nothing shall excuse Subcontractor from proceeding with prosecution of the Work.

# Failures to Perform

## If, in the opinion of Contractor, Subcontractor shall at any time (1) refuse or fail to provide sufficient properly skilled workmen or materials of the proper quality, (2) fail in any respect to prosecute the Work according to the Project Schedule, (3) stop, delay, or interfere with the work of Contractor or any other builder or subcontractor, (4) fail to comply with all provisions of this Subcontract or the Contract Documents as incorporated herein, (5) be adjudged a bankrupt, or make a general assignment for the benefit of its creditors, (6) have a receiver appointed, or (7) become insolvent or a debtor in reorganization proceedings, then, after serving two (2) days written notice, unless the condition specified in such notice shall have been eliminated with such two (2) days, the Contractor may at its option (i) without voiding the other provisions of the Subcontract and without notice to the sureties, take such steps as are necessary to overcome the condition, in which case the Subcontractor shall be liable to Contractor for the cost thereof; (ii) terminate for default the Subcontractor's right to proceed under the Subcontract, or (iii) seek specific performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that specific performance may be necessary to avoid irreparable harm to Contractor and/or Owner.

## In the event of termination for default, Contractor may, at its option, (1) enter on the premises and take possession, for the purpose of completing the Work, of all materials and equipment of Subcontractor, (2) require Subcontractor to assign to Contractor any or all of its subcontracts or purchase orders involving the Project; or (3) complete the Work either by itself, or through others, by whatever method Contractor may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the Work shall be fully completed and accepted by Owner.

## If the Owner terminates any portion of the prime agreement with Contractor which includes the Work, then the Subcontract shall be similarly terminated and Subcontractor shall be entitled to such relief as may be granted to Contractor on Subcontractor’s behalf consistent with Articles 1, 7 and 8 of the Subcontract.

## In the event of termination for default or any other reason, the provisions of this Subcontract concerning the subcontractor’s liability, indemnity and insurance obligations shall remain in full force and effect in conformance with and for the period(s) specified in those provisions.

# Settlement of Disputes

## In case of any dispute between Contractor and Subcontractor, due to any Owner Claims, any act or omission of Owner or any entity for which the Owner is responsible, or involving the Contract Documents, Subcontractor agrees, to the same extent that Contractor is bound to Owner, to be bound by the terms of the Contract Documents, and by any and all preliminary and final decisions or determinations made thereunder by the party, board or court so authorized in the Contract Documents or by law, whether or not Subcontractor is a party to such proceedings. In case of such dispute, Subcontractor will comply with all provisions of the Contract Documents allowing a reasonable time for Contractor to analyze and forward to Owner any required communications or documentation. Contractor will, at its sole option (1) present to Owner, in Contractor's name, or (2) authorize Subcontractor to present to Owner, in Contractor's name, all of Subcontractor's claims and answer Owner's claims involving Subcontractor's Work, whenever Contractor is permitted to do so by the terms of the Contract Documents. If such dispute is prosecuted or defended by Contractor, Subcontractor agrees to furnish all documents, statements, witnesses, and other information required, and to pay for all costs, including attorneys' fees, incurred in connection therewith. The Subcontract Price shall be adjusted by Subcontractor's allocable share determined in accordance with Article 7 hereof.

## With respect to any controversy between Contractor and Subcontractor not involving the Owner, the Contract Documents or an Owner Claim, Contractor shall issue a decision which shall be final and binding unless, within five (5) days of receipt, the Subcontractor files a notification in writing of its intent to litigate the controversy in accordance with Paragraph 8.d. Notification of any such claim under this Paragraph 8.b. must be submitted in writing within ten (10) days of Subcontractor's awareness of the facts underlying the claim. Failure of Subcontractor to submit timely its notice of claim or notice of intent to litigate shall constitute an absolute bar and complete waiver of Subcontractor's right to recover on account of such claim.

## Subject to Subcontractor's compliance with such notice requirements, either party may request non-binding mediation of non-Owner Claims with a mediator to be agreed upon by the parties, and shall pursue resolution of their dispute in good faith through such mediation. If the Parties cannot agree upon a mediator, they shall submit the dispute to the American Arbitration Association for non-binding mediation pursuant to its rules. Any such mediation shall take place in the place where the Project is located. Any mediation costs shall be equally borne by the parties.

## Anything to the contrary in the Contract Documents notwithstanding, any controversy between Contractor and Subcontractor not involving Owner, the Contract Documents, or an Owner Claim and which is not amicably resolved by the Parties will be to the State of Georgia arbitration pursuant to the Construction Industry Rules of the American Arbitration Association to be conducted at the place where the Project is located. The prevailing party in any litigation/ arbitration shall be entitled to recover reasonable attorney’s fees, costs and expenses incurred in connection with the litigation.

# Termination for Convenience

# Contractor shall have the right to terminate this Subcontract, in whole or part, for its own convenience and regardless whether there is a termination of Contractor's contract with Owner, by providing Subcontractor with a written notice of termination, to be effective upon receipt by Subcontractor. If the Subcontract is terminated for convenience, the Subcontractor shall be paid the amount representing costs which are due from the Owner for its Work, as provided in the Contract Documents, after payment therefore by the Owner to Contractor. The Subcontractor's remedy under this Article 9 shall be exclusive and in no event will Subcontractor be entitled to recovery of any anticipatory profits or damages.

# Assignment

## Subcontractor shall not subcontract any portion of the Work or the Subcontract and shall not assign or transfer this Subcontract, or funds due hereunder, without the prior, written consent of Contractor and Subcontractor's surety.

## Contractor may assign the Subcontract without prejudice to its rights under the Subcontract or any surety bond issued with respect thereto.

# Safety

## The Contractor makes no representation with respect to the physical conditions or safety of the Project Site. The Subcontractor shall, at its own expense, preserve and protect from injury its employees engaged in the performance of the Work and all property and persons which may be affected by its operations in performing the Work. The prevention of accidents to workers engaged in the Work and others affected by the Work is the responsibility of the Subcontractor and Subcontractor shall comply with all federal, state, labor and local laws, regulations and codes concerning safety as shall be applicable to the Work and to the safety standards established by Contractor during the progress of the Work. Subcontractor shall indemnify, defend and hold harmless Contractor, Owner and their respective officers, directors, agents and employees from any costs, expenses or liability (including attorneys' fees, fines or penalties) resulting from failure of Subcontractor to comply with the aforesaid laws, regulations and codes.

## Subcontractor must strictly adhere to the safety requirements contained herein or otherwise imposed or applicable. The Subcontractor, its agents, employees, material men, suppliers, laborers, and sub-subcontractors shall perform all work in a safe and responsible manner. In particular, Subcontractor shall, at its own expense, conform to the safety policies and regulations established by the Contractor and shall comply with all specific safety requirements of the Occupational Health and Safety Act of 1970, the Construction Safety Act of 1969, the American Disabilities Act of 1992, and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer the Acts. Subcontractor shall comply with said requirements, standards, and regulations, and require and be directly responsible for compliance therewith on the part of its agents, employees, suppliers, laborers, material men and sub-subcontractors; and shall receive, respond to, defend, and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure on the part of its agents, employees, suppliers, laborers, material-men or sub-subcontractors to so comply.

## Subcontractors who qualify shall verify that they have received proper and current training on the hazards on work scaffolds found in OSHA regulation 1926.454 and 1926.503.

# Bonds

Subcontractor may be required to furnish at Subcontractor's expense a Performance and Payment Bond each in the full amount (100%) of this Subcontract. The bond form and the surety shall be acceptable to the Contractor. All bonding companies shall be rated triple A by U.S. Treasury Department lists of approved sureties. Failure to deliver such bonds is a material breach of this Subcontract.

# 13. Clean-up

# Subcontractor shall clean up the areas used by Subcontractor for its Work on a daily basis and remove from the Project site, or to a specified location on the Project site as directed by Contractor, and in a manner that will not impede either the progress of the Project or of other trades, all rubbish, waste material, excess material and debris resulting from the Work.

14. Governing Law

This Subcontract shall be governed by and construed in accordance with the laws of the State of Georgia without regard to conflict of law principles and mediated by the American Arbitration Association at a location in the State of Georgia.

15. Presumption Arising From Authorship

Both Parties have had the opportunity to review this Subcontract with counsel and negotiate before signing this Subcontract. Therefore, there will be no presumption for or against either of the Parties arising out of the drafting of the Subcontract.

16. Warranties and Guarantees

## Subcontractor warrants that its work shall be: (1) fit for the purposes intended; (2) free from defects in material and workmanship; (3) comply with the Prime Contract and all applicable codes and industry standards; (4) be free and clear of all claims, encumbrances and liens.

## Subcontractor agrees to promptly make good, without cost to Contractor or Owner, any and all defects due to its failure to meet such warranties which may appear within the guarantee or warranty period(s) established in the Prime Contract, and if no such period(s) be stipulated in the Prime Contract, then such guarantee shall be for a period of one (1) year from the date of completion and acceptance of the Project by the Owner. Subcontractor further agrees to execute and special guarantees as provided by the Prime Contractor required by law. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

## Subcontractor shall pay for all changes to the Work or Project resulting from defects in workmanship or materials, as well as all expenses necessary to replace or repair either the Work or the Project, including any damages by the replacements or repairs. Subcontractor shall further be obligated to pay for, and shall reimburse Contractor for, all costs associated with the impact of its defective workmanship or materials. This obligation is in addition to all other guarantees, warranties and rights contained in the Prime Contract.