

1 33. Plaintiff is informed and believes and on that basis alleges that, at the time of the filing
2 and service of the stop notice, there was sufficient money due from BANK OF THE WEST out of
3 the construction loan funds to satisfy Plaintiff's claim and the reasonable costs of litigation.

4 34. BANK OF THE WEST has failed, neglected, and refused to pay plaintiff the sum of
5 \$533,493.79 and that sum, plus interest from date of filing at the rate of ten percent per annum is
6 now due, owing, and unpaid. Each and all of the defendants named in this complaint have or claim
7 to have some lien, right, title or interest in and to the construction loan funds or some part of them.
8 All these claims are subordinate to plaintiff's claim.

9 35. MURRIETA is the owner of the Project. On or about August 7, 2008, Plaintiff filed with
10 MURRIETA, its stop notice and verified statement of its claim. On August 28, 2008, Plaintiff also
11 filed with Douglas Wilson Companies, the Court Appointed receiver for Murrieta, its stop notice and
12 verified statement of its claim. A copy of the stop notice is attached to this complaint as Exhibit "7"
13 and incorporated by this reference.

14 36. By virtue of the Stop Notice and under the provisions of Section 3161 of the Civil Code,
15 MURRIETA had and has a duty to withhold from G COMPANIES sufficient money to answer
16 Plaintiff's claim of \$533,493.79 plus interest from the date of filing of the Stop Notice at the rate of
17 10 percent per annum, and attorneys fees and costs, including the costs of the bond, now due and
18 owing.

19 WHEREFORE, plaintiff prays for judgment as follows:

20 **ON THE FIRST CAUSE OF ACTION:**

- 21 1. For the principal sum of \$533,493.79;
22 2. For reasonable attorney's fees and costs according to proof; and
23 3. For interest according to proof.

24
25 **ON THE SECOND CAUSE OF ACTION:**

- 26 1. For the principal sum of \$533,493.79;
27 2. For costs of recording in the sum of \$13.00;
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1 3. That all of said amounts be adjudged to be a lien on the Property and on all the land
2 in this complaint described, and hereinbefore particularly described, be adjudged and decreed to be
3 sold by the Sheriff of the County of Los Angeles, State of California, according to the law and the
4 practice of this Court, and that the proceeds of said sale be applied to satisfy the costs of sale and the
5 costs of these proceedings and plaintiff's claim, as aforesaid;

6 4. That the interest, estates or claims of all the defendants, and each of them, in, to or
7 upon all of the Property, and every part thereof, be adjudged to be subsequent and subject to
8 plaintiff's lien as aforesaid; and the equity of redemption of each and every of said defendants in or
9 to the Property and every part thereof, be forever barred and foreclosed; and

10 5. That the plaintiff or any party to this action may become a purchaser at such sale.

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12 **ON THE THIRD CAUSE OF ACTION:**

- 13 1. For the principal sum of \$533,493.79;
14 2. For reasonable attorney's fees and costs according to proof; and
15 3. For interest according to proof.

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17 **ON THE FOURTH CAUSE OF ACTION:**

- 18 1. For the principle sum of \$533,493.79;
19 2. For reasonable attorneys' fees and costs, including but not limited to \$8,814.00, the cost
20 of the bond, according to proof;
21 3. For interest according to proof;
22 4. For judgment against Bank of the West;
23 5. For judgment against Murrieta;

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1 **ON ALL CAUSES OF ACTION:**

- 2 1. For costs of suit incurred herein;
3 2. For such other and further relief as the court deems just and proper.
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5 DATED: December 10, 2008

TAUBMAN, SIMPSON, YOUNG & SULENTOR

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7 By: 

8 MATTHEW D. FISCHER, Attorneys for plaintiff
9 AMPAM PARKS MECHANICAL, INC.
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VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I have read the foregoing FIRST AMENDED COMPLAINT FOR: BREACH OF
CONTRACT, FORECLOSURE OF MECHANIC'S LIEN, UNJUST ENRICHMENT; and,
ENFORCEMENT OF STOP NOTICE and know its contents.

I am the Chief Financial Officer of AMPAM PARKS MECHANICAL, INC. a party to
this action, and am authorized to make this verification for and on its behalf, and I make this
verification for that reason. I have read the foregoing document and know its contents. I am
informed and believe and on that ground allege that the matters stated in it are true except as to those
matters which are therein stated upon my information or belief, and as to those matters, I believe
them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this
Verification is executed on 12/10/08 at Wilmington, California.


JAMES WRIGHT

EXHIBIT 1

LEGAL DESCRIPTION

Parcels 13 through 16, inclusive of Parcel Map No. 31093, in the City of Murrieta, County of Riverside, State of California, as shown by Map on file in Book 208, Pages 68 through 72 inclusive, of Parcel Maps, in the Office of the County Recorder of said County.

Except one-half of all mineral rights as reserved to Raleigh Brown and Adele Brown, Husband and Wife by Deed recorded March 20, 1950, in Book 1157, Page 220 of Official Records, Riverside County Records.

EXHIBIT 2

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RECEIVED

OCT 18 2006

GCCI

G COMPANIES CONSTRUCTION, INC.
SUBCONTRACT AGREEMENT

REC'D OCT 17 2006

THIS SUBCONTRACT, dated 18th day of May 2006, by and between G Companies Construction, Inc., PO Box 2770, Newport Beach, CA 92658, (949) 973-6417 Phone, (949) 973-6425 Fax, herein called the "Contractor" and AMTAM Park, Washington 188 Washington Boulevard, Whittier, CA 90744, (310) 535-1332 Phone, (310) 535-2313 Fax, herein called the "Subcontractor".

RECITAL

Contractor proposes to construct, develop and/or subdivide a tract of land (the "Project") commonly known as Village Walk/Midstate 433, County of Riverside, State of California (the "Property"). The construction of the Project is to be in strict accordance with the provisions and requirements set forth in the plans, specifications, and any other document listed in Schedule B attached hereto; all of these documents are on file and available during business hours for inspection and review at Contractor's principal office. Such documents are herein designated as the "Contract Documents" and are incorporated herein by this reference. These Contract Documents are intended to complement and supplement each other, and work described in one document but not in another shall nevertheless be executed as if such work were described in all documents, inasmuch as various Contract Documents have been approved and comply with County, City and financial institution requirements, it is essential that Subcontractor proceed and perform his work in strict conformity with the applicable portions of the Contract Documents.

NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **FINANCING CONDITION/TERMINATION FOR CONVENIENCE:** This Subcontract is subject to and contingent upon the Project's Owner(s) obtaining sufficient construction loans from time to time for the Project. Contractor may at any time, and for any reason, including the Project's Owner(s) inability to obtain sufficient construction loans for the Project, terminate the work and services of Subcontractor under this Subcontract for Contractor's convenience upon three (3) days written notice. Upon receipt of such notice, Subcontractor shall, unless otherwise directed, immediately discontinue the work and the placing of orders for materials in connection with the performance of this Subcontract, and shall thereafter do only such work as may be necessary to preserve and protect the work in progress. Upon such termination, Subcontractor shall be entitled to compensation and payment (a) for the percentage of the work completed in conformity with the Subcontract multiplied by the Contract Price, and (b) other costs actually incurred by Subcontractor for the performance of termination-related tasks as may be directed and approved by Contractor. These shall be deducted from such compensation the amount of any payments made to Subcontractor prior to the termination and any amounts chargeable to Subcontractor pursuant to any provision of the Subcontract. In the event of such termination and payment, Subcontractor shall not be entitled to any claim or claim of loss against Contractor or the Property for any additional compensation or damages.

2. **DOCUMENTS:** The Contract Documents describe the work to be performed by Subcontractor under this Subcontract, and Subcontractor shall be bound to Contractor in the same manner and to the same extent as Contractor is bound to the Owner under the Contract Documents. Subcontractor acknowledges that he has carefully examined and studied the Contract Documents in their entirety. Subcontractor further acknowledges that the work of the various subcontractors for the Project is interrelated, and Subcontractor fully understands the character of the work to be performed by him under the Contract Documents. Subcontractor has investigated the site and is satisfied as to the conditions to be encountered during his operations. Subcontractor shall not in any respect rely upon any representations in him by any person on behalf of the Contractor, but shall rely solely upon his own investigations. Commencing work shall indicate acceptance of conditions and surfaces underlying or adjacent to work of this Agreement.

3. **WORK COVERED:** Subcontractor agrees to perform in good and workmanlike manner, and to furnish to the Project all labor, materials (all materials shall be new unless otherwise specified by Contractor), supplies, equipment, services, machinery, tools and other facilities of every description required for the prompt and efficient execution of the work (the "Job") as outlined in Schedule A attached hereto. Subcontractor shall be obligated to perform the Job in strict compliance with the Contract Documents and the provisions of this Subcontract. It is agreed that all labor, materials and equipment furnished by Subcontractor that are properly and necessarily required to perform and provide a complete Job shall be deemed to be included within the Contract Price, even though all items of labor, materials and equipment may not specifically be mentioned in this Subcontract or the Contract Documents.

4. **CONTRACT PRICE:** For the actual (not estimated) performance by Subcontractor of all of its obligations hereunder, Contractor shall pay to Subcontractor the sum of THREE MILLION EIGHT HUNDRED SIXTY EIGHT THOUSAND DOLLARS (\$3,868,000.00) attached hereto, subject to additions and deductions as provided in this Subcontract. Price for labor and materials to be held constant for a period of one (1) year from date of execution. Costs A shall not be held.

5. **PAYMENT SCHEDULE:** So long as Subcontractor is not in default under any of the provisions of this Subcontract, periodic payments will be made for the work as it progresses in an amount equal to ninety percent (90%) of the value of the work and materials incorporated in the construction as estimated by the Contractor. The amount estimated will be determined by using unit price or prices specified in Schedule D attached hereto and shall be in accordance with the payment schedule set forth therein. With respect to the work covered by any request for a progress payment, Contractor shall not be obligated to make the progress payments to Subcontractor until Contractor has received:

(a) inspection and approval of Subcontractor's work hereunder, if required and available, from City, County and other public agencies;

(b) Waiver and lien release, in a form satisfactory to Contractor, from Subcontractor, all sub-subcontractors, laborers, materialmen, trust funds, and other persons and entities who may be potential lien claimants against the Property, evidencing that all labor, materials, equipment, union benefits, payroll taxes and other similar items furnished in connection with the performance of the work under this Subcontract have been paid.

Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor to Contractor under this Agreement on account of any other obligation, liability or contract unrelated to this Agreement, and in the event of any breach by Subcontractor of any provision or obligation of this Agreement, or in the event of the expiration by either party of any claim or lien against Contractor or the construction site arising out of Subcontractor's performance of this Agreement, Contractor shall have the right, but is not required, to retain out of any payments due or to become due to Subcontractor an amount sufficient to completely protect Contractor from any and all loss, damage, or expense therefrom until the situation has been remedied or adjusted by Subcontractor to the satisfaction of Contractor. If Contractor exercises this right in good faith, Subcontractor shall not be entitled to any interest whatsoever on the money so retained regardless of the outcome of any subsequent claim resolution or litigation.

Any payments made hereinafter shall not be construed as evidence of acceptance of Subcontractor's work. Final acceptance is defined as all work that is accepted by both governing public agency(ies) and O'Connell Construction, Inc.

If construction loan funds are deposited in a joint control account, Subcontractor agrees to accept payments from such account and any order given by Contractor to Subcontractor thereon shall be deemed payment on the part of Contractor and a release of Contractor in the amount of any such order. Contractor shall have the right to make direct payments to any of Subcontractor's laborers, materialmen or sub-subcontractors on behalf of and for the account of Subcontractor or by joint check to Subcontractor and any of them, but Contractor has no obligation to do so.

Contractor and Subcontractor understand and acknowledge that it is a public offense in California for any person who receives money for the purpose of paying for services, labor, materials or equipment on a construction project to willfully fail to so apply such money and wrongfully divert the funds to another use. Contractor will pay Subcontractor for work performed under this Subcontract as and when funds for the project are received by Contractor from the owner of the property (Owner). In the event that Owner wrongfully fails to pay Contractor under Contractor's agreement with Owner for work on the project (the "Prime Contract"), Subcontractor hereby agrees to proceed upon, prosecute and defend in all respects to a final determination the Subcontractor's work on this, any other and bond rights and remedies, prior and as a condition precedent to filing any action or proceeding (or commencing arbitration if available) against Contractor or otherwise pursuing enforcement of Subcontractor's rights to payment under this Subcontract. Contractor shall notify Subcontractor in the event that any progress payment or final payment to Subcontractor is delayed due to Owner's failure to pay Contractor under the Prime Contract, but Contractor's failure to provide such notice to Subcontractor shall in no way affect the Subcontractor's remedies provided for in this section.

Subcontractor acknowledges that Contractor would not have entered into this Subcontract without the provisions of this section, and that it would be impossible to measure in money the damages to Contractor if Subcontractor fails or refuses to comply with the limitations of remedies provided for in this section, and agrees that in the event of Subcontractor's breach of any such provisions, Contractor will not have an adequate remedy at law. It is therefore agreed that Contractor, in addition to any other available rights or remedies, shall be entitled to immediate declaratory or injunctive relief to enforce such provisions or any of them, and that in the event Contractor brings any action or proceeding in equity to enforce them, Subcontractor will not urge as a defense that there is an adequate remedy at law.

4. RETENTION: Contractor shall be entitled to retain and withhold from the amount due Subcontractor without interest the sum equal to 10% of the labor portion of the Contract Price, Retention is not to be withheld from material drawn, designated as "Retention" for a period ("Retention Period") not to exceed the last of the following events to occur:

1. Thirty-five (35) days from the filing of a notice of completion by Contractor on the Project; or
 2. When applicable, thirty-five (35) days from receipt of "other third" inspections by the lender.
- Contractor shall pay the Retention to Subcontractor no later than seven (7) days after the expiration of the Retention Period.

7. CHANGES: Contractor may, at any time by written order of Contractor's authorized representative, and without notice to Subcontractor's surety, make changes in, including additions to and omissions from the Job to be performed and materials to be furnished under the Subcontract, and Subcontractor shall immediately upon receipt of Change Order proceed with the performance of the Subcontract as so changed. No change in the terms and conditions of the Subcontract or in the terms or manner of payment shall in any way unreasonably or unfairly, in whole or in part, any surety on any bond furnished by or on behalf of Subcontractor. Any changes shall be subject to all the terms and conditions of the Subcontract.

The only representative authorized to make any changes or to have change orders on behalf of Contractor is the Project Manager. In the event that Subcontractor is requested to perform services or furnish materials over and above his contract provisions, he must first obtain written authorization, which shall be issued only by the Project Manager. All other instructions, verbal or written, that the Subcontractor may receive shall be deemed as part of the original work and no additional compensation shall be given. All additional work performed or material supplied prior to or without a written authorization by the Project Manager shall be considered work performed at no charge to the Contractor. A change made or ordered by any other person shall not be binding upon Contractor.

If any such ordered change increases or decreases the cost of performing the Job under the Subcontract, the Contract Price will be adjusted by appropriate additions or deductions as mutually agreed upon by the parties hereto before the changed work is performed. If the parties hereto cannot agree on the amount of the adjustment to be made, Subcontractor shall nonetheless promptly proceed to perform the work as changed, and Subcontractor shall keep and submit to Contractor, in the manner specified below, a cost breakdown as needed to substantiate the amount of the adjustment. Any claim by Subcontractor for an adjustment of the Contract Price under this paragraph must be submitted in writing within seven (7) days from the date any such change is ordered.

If a dispute arises between the parties hereto as to whether any particular work is a change to the Job described in the Subcontract, Subcontractor shall nonetheless timely perform the alleged changed or extra work and may submit a written Notice of Intent to file a claim for Additional Money, such written notice must be submitted to Contractor within three (3) or seven (7) days after commencing the performance of the alleged changed or extra work. If said notice is timely given, as a further condition precedent to enforcement of the alleged changed or extra work, including (a) a labor breakdown by name of person, hours worked, and task performed occasioned by the alleged changed or extra work, (b) a similar breakdown for all equipment used, and (c) copies of all invoices and delivery tickets for materials used. IF SAID NOTICE OF INTENT TO FILE CLAIM FOR ADDITIONAL MONEY IS NOT TIMELY GIVEN OR IF SAID COST BREAKDOWN IS NOT KEPT AND SUBMITTED AS SPECIFIED, SUBCONTRACTOR AGREES THAT EITHER SUCH FAILURE WILL BE AND CONSTITUTE CONCLUSIVE AND NONREBUTABLE EVIDENCE THAT NO CHANGED OR EXTRA WORK WAS PERFORMED AND THAT NO PAYMENT FOR THE ALLEGED CHANGED OR EXTRA WORK IS DUE SUBCONTRACTOR.

The amount of any disputed changed or extra work will be determined in the manner set forth in Section 9 and payment for any changed or extra work in which Subcontractor may become entitled to under this section shall be made in accordance with Section 5 above.

8. ADHERENCE TO PLANS AND SPECIFICATIONS: Subcontractor shall make no changes in nor shall he deviate from the Contract Documents, and he shall be responsible and liable for any and all damage that may result from such changes or deviations. In addition, Subcontractor may be required at his own cost and expense to cause any of his work to conform strictly to the Contract Documents, unless a written authorization of Contractor executed in accordance with Section 7, addressed to Subcontractor, shall be given setting forth in detail what specific changes may be made.

For purposes of interpreting the Contract Documents, should the plans vary from the specifications, then the specifications shall govern. Should there be any discrepancy between the plans or the specifications, or both, and any governmental laws or regulations, then those, which are more stringent and/or maximum, shall govern. Contractor assumes no responsibility for failure of the plans or specifications of the Contract Documents to meet with governmental laws or regulations, and it is conclusively presumed that Subcontractor is familiar with said governmental laws or regulations, regardless of the provisions of the Contract Documents.

Subcontractor agrees that should any change, without increase in the Contract Price, Contractor with the requirement of governmental authority. If any of the Contract Documents provide for work contrary to any such laws and regulations, Subcontractor shall be required to notify Contractor in writing, prior to the correction of such Contract Documents, to comply with the applicable law or regulation, and Subcontractor shall not perform any such work until the corrected Contract Documents have been approved in writing by Contractor.

9. **ADJUSTMENT FOR CHANGES:** In the absence of agreement as to the amount of the adjustment to be made for any changed, or alleged changed or extra work, any adjustment to the Contract Price which may be due on account thereof shall be determined as follows: (a) when a change results in an increase in costs or extra work is involved, the Contract Price will be increased on the basis of the increase in direct costs actually incurred by Subcontractor to perform the changed or extra work, plus a mark-up thereon of fifteen percent (15%) on labor and ten percent (10%) on materials as an allowance for all indirect costs, field supervision, tools, general and administrative expenses, overhead (including any home office overhead) and profit; (b) in the event of any deletion or other change which results in a decrease in costs, the Contract Price will be decreased on the basis of the direct costs which would have been incurred by Subcontractor had the change not occurred, plus the profit which would have been earned; provided, however, that if any deleted work is a separately priced item of work under the Subcontract, the Contract Price will be decreased on the basis of such item's price; and (c) when both increases and decreases covering related work or substitutions are involved in any one change, the mark-up allowances shall be figured on the basis of the net increase, if any, with respect to such change. Direct costs as used in this Section shall be limited to the following: (a) cost of materials, including any applicable sales tax and transportation expenses applicable thereon; (b) cost of labor for the workman consisting of wages, and fringe benefits and other labor burden expenses actually paid to or on behalf of the workman; and (c) a reasonable rental value for use of equipment, but individual pieces of equipment having a replacement value of \$300.00 or less shall be considered to be tools and no payment will be made therefor.

As to work approved by Contractor to be performed on a time and material basis, the Subcontractor's billing shall be based on actual hours as verified by daily work tickets, which must be approved by Contractor's field superintendent within 34 72 hours of the work being performed. Contractor's field superintendent's signature on daily work tickets are strictly to verify the labor and equipment hours are accurate as shown on the daily work tickets in no way constitute any approval nor agreement that Subcontractor will be paid for additional work. Any work performed over and above the "Not to Exceed" amount stated on the Authorization for Extra Work and which does not comply with Section 7 shall be considered done at no charge to the Contractor.

Any changed and/or extra work requested by Contractor, whether disputed or authorized, that requires hourly equipment rental shall be performed at the rates as follows:

(a) For Subcontractor's owned equipment, the rate shall be rental rate as set forth in the most recent publication of the State of California Business, Transportation, and Housing Agency, Department of Transportation, Division of Construction, Labor Surveys and Equipment Rental Rates. These rental rates will be for equipment "Operated and Maintained" and include Subcontractor's overhead and profit, all applicable payroll taxes including Federal and State Unemployment Insurance, FICA, Worker's Compensation, and Union Benefits.

(b) For non-owned equipment rented from third parties, compensation shall be the actual invoice cost plus 10% for overhead and profit and such costs shall be substantiated by an invoice from the supplier.

If the Subcontractor elects to work overtime for any reason not requested by the Contractor, no premium compensation shall be paid. If the Subcontractor is requested by the Contractor to operate on a premium time basis, Subcontractor shall be compensated for the premium costs only, as applies to the overtime hours, which are additional to the contracted operating hours of the Subcontractor. In the event the Contractor decides to have the Subcontractor work on a premium time basis for an extended time period the above rates shall be negotiated by the Contractor and Subcontractor.

10. **TAXES:** The Contract Price includes the payment by Subcontractor of any tax under California Sales or Use Tax Laws, or any amendments thereto, or any law now existing, or which may hereafter be adopted by Federal, State, local or other governmental authority, taxing the materials, services required, or labor furnished, or any other tax levied by reason of the work performed or to be performed hereunder.

11. **COMMENCEMENT AND COMPLETION OF THE JOB:** TIME IS OF THE ESSENCE of this Agreement. Subcontractor to commence the Job on the date specified by the Contractor and shall prosecute and complete the work undertaken in a prompt and diligent manner and in accordance with "Contractor's Sequence Schedule" and all revisions made thereto, and shall not delay, interfere with or hinder the work of Contractor or any other subcontractor. Upon request by Contractor, Subcontractor shall furnish to Contractor a schedule or scheduling information in such form as Contractor may require relating to the work to be performed under this Agreement. The time given Contractor to perform all its work under its contract with the Owner shall not be the time Subcontractor has to perform its work nor evidence of time, but Subcontractor shall be required to perform its work in strict accordance with Contractor's program schedule. If Contractor shall deem it necessary, Subcontractor, at its own expense and on demand of Contractor, shall provide additional work force, overtime, additional skills and shall expedite the furnishing of material so as to meet the program schedule. Contractor shall have the sole right to establish the time and order in which the various portions of the entire project work shall be performed, and, in case of conflict, to establish priority of work performance as between Contractor, Subcontractor and other subcontractors.

The Subcontractor agrees that he is aware that the Project will be constructed in phases. Before fabrication and/or placing orders for non-standard or special materials, Subcontractor shall contact Project Superintendent as to starting date, production and scheduling. Subcontractor agrees to commence the several parts thereof at such times, and proceeding therewith in such order as directed by Contractor's superintendent, and agrees to finish the several parts and the whole of the Job as provided herein, so that, in conjunction with other trades engaged thereon, he will assure the uninterrupted progress of the Project. In the event Contractor's work schedule should be changed, Subcontractor will proceed in strict accordance with Contractor's directions. Any changes in the schedule shall be made in writing as specified in Section 7. Subcontractor will cooperate with related work and will not interfere in any manner with the work of Contractor or other subcontractors. In the event of any conflict in the work schedule of Subcontractor and Contractor or any other Subcontractor, Contractor shall decide which work shall have precedence and the decision of Contractor shall be final. Any construction sequence or program schedule furnished by Contractor to Subcontractor shall be solely for Contractor's benefit, and Subcontractor makes no representation that access or work will be ready for Subcontractor at the time indicated therein; nevertheless, Subcontractor must be ready and able to perform the Job within the time period indicated in any such schedule. Subcontractor shall not be entitled to recover from Contractor any additional compensation or damages on account of any delay or disruption in Subcontractor's performance of the Job, whether caused in whole or in part by Contractor or others, including conduct on the part of Contractor which may amount to a breach of this Subcontract.

12. **LINE, GRADES AND MEASUREMENTS:** Subcontractor assumes full responsibility for the proper interpretation and interpolation of all lines, levels and measurements and their relation to bench marks, property lines, reference lines and the work of the Contractor or other subcontractors. In all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of the conditions shall rest entirely on Subcontractor. No variation from specified lines or grades or dimensions shall be made except on written authority of Contractor. All work shall be made to conform to actual, final conditions as they develop in the course of construction.



13. **RELATED WORK:** By and with the work hereunder, Subcontractor acknowledges that all related work or dependent work, services, utilities or materials are available to him. Unless the Subcontractor reports prior damage in writing to the Contractor, Subcontractor hereby waives any and all claims for damages or claims with respect to defects in or failure of such work, services, utilities or materials.

14. **INTERRUPTION OF WORK:** If, as a result of fire, earthquake, act of God, war, strikes, picketing, boycott, lockouts or other causes or conditions beyond the control of Contractor, Subcontractor discontinues the Job prior to its completion, then Subcontractor shall resume work as soon as conditions permit, or if Subcontractor shall discontinue work because Contractor shall consider it inadvisable to proceed with the Job, then Subcontractor will resume the Job promptly upon receiving written notice from Contractor to do so, and Subcontractor shall not be entitled to any damages or compensation on account of cessation of work as a result of any of the causes mentioned above. Completion of Contract measures no occurrence of "Force Majeure".

15. **INSPECTION AND APPROVALS:** The Job or any portion of the Job shall be subject to inspection and approval by all applicable governmental authorities. Contractor and Contractor's representatives shall be required to furnish for the approval of all governmental authorities, Contractor and Contractor's representatives such samples, shop drawings and patterns as may be required for the Job, and all work hereunder shall be in accordance therewith. Subcontractor shall provide sufficient, safe and proper facilities during the progress of the Job for all such inspections in the field, at shops or any place where materials required hereunder are in the course of preparation, manufacture, treatment or storage. It is agreed that any change or correction required as a result of any such inspections shall be made by Subcontractor without additional charge, unless otherwise specifically agreed upon by Contractor in writing. Subcontractor shall request all inspections for his work and obtain approval of same. If additional testing and/or inspections are required of Subcontractor's work due to Subcontractor's fault or an act of God, Subcontractor agrees to compensate Contractor any additional costs incurred for testing and inspections.

16. **BOND REQUIREMENTS:** Within ten (10) days after the execution of this Agreement, if required by Contractor, Subcontractor shall furnish to Contractor a Performance Bond and/or a Labor and Materials Bond in a form satisfactory to Contractor, each in an amount equal to the full amount of the Contract Price. A Corporate Surety Company licensed to do business in the State of California shall execute each bond. Subcontractor, by its execution hereof, warrants that it can obtain said bonds at a cost of not more than one percent (1%) of the principal amount thereof. If Subcontractor fails to so furnish any required bond, Contractor may, at its option, terminate this Subcontract without any liability of any kind to Subcontractor. In the event Contractor requires Subcontractor to furnish either or both of the bonds mentioned above, Contractor shall pay the cost thereof. It is agreed that no charge, alterations or modifications in or deviation from this Subcontract or the Contract Documents, whether made in the manner herein provided for or not, shall release or exonerate in whole or in part, any surety on any bond given in connection with this Subcontract, and each and every surety bond required hereunder shall so provide.

17. **CORRECTION AND REMOVAL OF DEFECTS IN MATERIAL OR WORK:** All defects in material used or work performed under this Subcontract as designated by City or County inspectors or Contractor, upon inspection and brought to the attention of Subcontractor shall immediately be corrected by Subcontractor to the satisfaction of Contractor and the designating person. If any workmanship or materials are declared in writing by Contractor or any applicable governmental authority to be unsound or improper then, within twenty-four (24) hours after service upon him of written notice from Contractor or the appropriate governmental authority to that effect, Subcontractor shall proceed with due diligence to remove from the site all such materials, whether installed or incorporated in the Job or not, and shall remove all such portions of the unsound or improper work. Subcontractor shall also restore or repair any work of other trades damaged by such a removal. In the event that all or any portion of such work shall be of such a nature, or the time available to complete the whole work shall be so limited, that in the judgment of Contractor it would be impractical to order the work replaced or corrected, Contractor, at its option, may deduct from the payment due or to become due to Subcontractor an amount that shall represent the difference between the fair and reasonable value of such work and its value had it been executed in conformity with the Contract Documents.

18. **UNSATISFACTORY WORK:** Upon written notification from the Contractor that Subcontractor's work is in any respect unsatisfactory, needs correction, is not in compliance with the Contract Documents, or that the Job has been damaged, Subcontractor shall, within twenty-four hours of such notification, proceed with due diligence to take all action necessary to correct or repair the Job.

19. **DAMAGE TO WORK:** Should Subcontractor damage the work or installation of Contractor or any other subcontractor, Subcontractor shall promptly pay to Contractor or such subcontractor, as the case may be, all costs incurred in repairing the damage. Subcontractor and his suppliers shall not be permitted to drive any vehicle over any curb or sidewalk on the Project at any time by any means, and Subcontractor shall take all action necessary to assure that his suppliers comply fully with the requirements of this Section and shall be fully responsible for all damage to curbs and sidewalks caused by his vehicles or those of his suppliers. Subcontractor shall be responsible for maintaining and protecting the Job and bear the risk of any damage thereto until such time as the entire Project is completed and accepted. All damage to the Job occurring prior to full completion and final acceptance of the Project as a whole, regardless of who caused such damage or how it occurred, shall be promptly repaired or replaced by Subcontractor at his own cost and expense.

20. **HOLD HARMLESS:** Subcontractor will hold Contractor harmless from any and all damages caused by defective workmanship or materials, and delays caused thereby, and will pay and reimburse Contractor for any and all such damages. In the event any dispute arises as to Subcontractor's workmanship or the quality of materials furnished, the decision of Contractor reasonably made and arrived at shall be binding.

21. **GUARANTEE:** Subcontractor guarantees Contractor and all future owners of the Project, or any portion thereof, against any loss or damage arising from any defect in materials and workmanship furnished under this Subcontract for a period of one (1) year from the date of issuance of a Certificate of Occupancy for each building final acceptance of the Project as a whole. Upon written notification of defects from Contractor or any such owner, Subcontractor shall proceed within twenty-four (24) hours of such notice with due diligence, at his own expense, to replace any defective material or perform any labor necessary to correct any defect in the Job. Upon failure of Subcontractor to do so, Contractor, or the affected owner, may furnish or secure, at Subcontractor's expense, immediately due and payable by Subcontractor, which debt Subcontractor shall pay to Contractor within fifteen (15) days after written demand from Contractor or the affected owner. This special one-year guarantee provided herein shall be deemed to be in addition to other contractual and statutory warranties of performance and not in lieu thereof.

22. **DELAY IN PERFORMANCE:** TIME IS OF THE ESSENCE of this Subcontract. Contractor may, from time to time, establish specific schedules for the pace and rate of performance of this Subcontract work and other portions of the Project work, including without limitation, benchmark dates or intermediate completion dates for various portions of the Project, a completion date for the entire Project, specific number of units to be completed within a given time period, and the number of qualified workers necessary, as determined by Contractor, in carrying out this Subcontract, in relying on Subcontractor's ability and willingness to perform his work at the pace or rate as may be established by Contractor from time to time. Subcontractor shall prosecute the Job in accordance with

Contractor's Construction Sequence Schedule
interfere with or hinder the work of Contractor

23. **SUBCONTRACTOR DEFAULT OR TERMINATION:** In the event Subcontractor, at any time, fails to properly and diligently prosecute the Job, fails to pay its workers, sub-subcontractors or suppliers, or otherwise breaches a material provision of this Subcontract, and such failure or default is not corrected within forty-eight (48) hours after receipt of written notice from Contractor to do so, then Contractor may, at its option:

- (a) Without taking over the work, provide necessary labor and materials or employ any other person or persons, including another contractor, to finish the work and provide the materials therefor at the expense of Subcontractor; or
- (b) Terminate Subcontractor's right to further perform under the Subcontract and complete the Job at the expense of Subcontractor. If Contractor so terminates Subcontractor's right to perform under the Subcontract, Contractor shall have the right to use any materials, tools or equipment furnished by or belonging to Subcontractor to complete the Job without any compensation to Subcontractor for such use, and Subcontractor shall not be entitled to receive any further payment under the Subcontract until the entire Project has been completed, at which time, if the unpaid balance of the amount to be paid under the Subcontract exceeds the expenses incurred by Contractor in finishing the Job and any damages sustained by Contractor as a result of Subcontractor's default, such excess will be paid to Subcontractor, but if such expenses and damages shall exceed the unpaid balance, Subcontractor shall pay the difference to Contractor.

As used in this section, "expense" shall mean the actual cost incurred by Contractor, plus a working allowance of 15% on such cost.

24. **DEFENSE OF PATENT:** Subcontractor shall defend all suits or claims for infringement of any copyright or any patent right that may be brought against Contractor, the Owner or the Architect arising out of the Job, and shall hold Contractor, the Owner or the Architect harmless from loss on account thereof, except that Subcontractor shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer(s) is specified for use by the Contract Documents.

25. **CUTTING, FITTING AND PATCHING WORK OF OTHERS:** Subcontractor shall, as a part of the Contract, receive or be relieved by the work of other subcontractors, shown in or reasonably implied by the Contract Documents. Subcontractor agrees to protect the work of others from damage as a result of his operations. Should Subcontractor cause damage to any separate subcontractor on the work, then Subcontractor agrees to compensate promptly such subcontractor to the extent of his damage as provided in Section 15.

26. **CLAIMS OF SUBCONTRACTOR FOR DELAY OR DAMAGE:** Subcontractor expressly waives any and all rights to make claims or be entitled to receive any compensation or damages for failure of Contractor or other subcontractors to have related portions of the Job completed in time for the work of Subcontractor to proceed.

27. **INSURANCE:** The Subcontractor and his sub-subcontractors shall during the continuance of the work under this Agreement, including when work is suspended therewith, procure and maintain in force, at their sole cost and expense, insurance coverage in the limits and under the terms specified below. The insurance to be furnished by Subcontractor shall be issued by a company or companies acceptable to Contractor and authorized to transact business in the State of California. Subcontractor shall, within ten (10) days after the execution of this Subcontract or prior to his commencement of any work (whichever occurs first), provide to Contractor certificates of insurance evidencing that the required insurance coverage is in full force and effect, and such certificates shall provide, by endorsement, that the coverage therein provided shall not be cancelled, reduced or otherwise materially changed without thirty (30) days prior written notice to Contractor. In the event the coverage evidenced by any such certificate is cancelled, reduced or otherwise materially changed, Subcontractor shall procure new coverage and furnish to Contractor a new certificate conforming to the insurance requirements specified herein at least five (5) days before the effective date of such change. If Contractor fails to procure and maintain any insurance coverage required by this Subcontract, Contractor may, in addition to other remedies, procure such insurance and charge the expense to Subcontractor or terminate the Subcontract. All policies must be written by insurance companies whose rating in the most recent Best's Rating Guide, is not less than A.V. All coverage forms must be acceptable to Owner and Contractor. If requested, Subcontractor shall provide certified copies of all such policies to Owner and Contractor within 30 days of such request. Contractor reserves the right but shall have no obligation, to procure the insurance or any portion thereof, for which Subcontractor is herein responsible and which is described in this section.

Contractor shall notify Subcontractor if Contractor waives its right whereupon Subcontractor's responsibility to carry such insurance shall cease and all the premiums and other charges associated with such insurance shall be refunded to Contractor. Contractor further reserves the right at any time, with thirty (30) days written notice to the Subcontractor, to require that Subcontractor resume the procurement and maintenance of any insurance for which Contractor has elected to become responsible pursuant to this section. In such event, the same paid to Subcontractor by Contractor shall increase to the extent of any previously agreed and implemented reduction (as noted above) attributable to Contractor's prior assumption of the particular insurance coverage. Such refund shall be equitably pro-rated based upon Subcontractor's completed work at the time of such adjustment.

Subcontractor agrees to include in his agreement, with his sub-subcontractors all provisions mentioned in Section 27 herein and shall require of any and all of their sub-subcontractors to maintain similar insurance per Section 27 herein. Contractor reserves the right, in its sole discretion, to require higher limits of liability coverage if, in Contractor's opinion, operations by or on behalf of the Subcontractor create higher than normal hazards and, may require that the Subcontractor name additional parties having interest as additional insureds. All policies required by this Agreement must contain a Waiver of Subrogation in favor of the Owner and Contractor. In the event that materials or any other type of personal property ("personal property") is required for the Project or delivered to the Project site, Subcontractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons. Compliance or failure to comply by the Subcontractor with the requirements included in Section 27 as to carrying insurance and furnishing certificates, shall not relieve the Subcontractor of his liabilities and obligations under this section. Insurance coverages and limits required are as follows:

1. **Worker's Compensation/Disability Insurance:**

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident \$1,000,000 each accident
- Bodily Injury by disease \$1,000,000 policy limit
- Bodily Injury by disease \$1,000,000 each employee
- Coverage must include a waiver of subrogation endorsement.

2. **Commercial Auto Coverage:** Auto Liability limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability Insurance including but not limited to owned autos, hired or non-owned autos.

3. **Comprehensive General Liability or Commercial General Liability:**

- a) **Comprehensive General Liability:**
The limits of liability shall not be less than:

Combi 31
Bodily Injury 1
Damage per Occurrence \$2,000,000

b) Commercial General Liability
The limits of liability shall not be less than:
Each Occurrence Limit \$1,000,000
Personal Advertising Injury Limit \$1,000,000
Products/Completed Operations Aggregate Limit \$1,000,000
General Aggregate Limit \$2,000,000
(Other than Products/Completed Operations)

The policy forms must include:

- Fire and Operations coverage with no explosion, collapse, or underground damage (XCU) exclusion.
- Products and Completed Operations coverage. (Subcontractor agrees to maintain this coverage for 10 years following the acceptance of his work by the contractor or until all applicable Statutes of Limitations expire, whichever length of time is longer.) Subcontractor further agrees to continue naming Contractor and any other parties in interest as Additional Insured(s) for the entire length of time as described above;
- Blanket contractual coverage or its equivalent.
- Broad Form Property Damage coverage including completed operations or its equivalent.
- An underwriting naming Owner and any other parties in interest as additional insured(s) under the coverage specified under Insurance Requirement 1. Each underwriting shall contain the following provisions:

"It is understood and agreed that G Companies Construction, Inc., Bank of the West, Morrisville Village Walk L.P., its officers, directors, agents, servants, employees, divisions, subsidiaries, partners, shareholders and affiliated companies are additionally named as insureds under this policy, with respect to legal liability or claims caused by, arising out of, or relating to the sale or construction, work or work product, of the named insured or of others performed on behalf of the named insured."

The above underwriting shall be acceptable as well as ISO forms CG20108 11/93 or CG2026 11/93 or equivalent. ISO forms CG2010A or CG20108 10/93 or their equivalent ARE NOT ACCEPTABLE. Any form that lists coverage to "ONGOING OPERATIONS" or otherwise does not grant additional insured status under the products/completed operations coverage IS NOT ACCEPTABLE. If the Subcontractor conducts a thorough search of available insurance companies who offer General Liability coverage and it is determined that ISO forms CG20108 11/93 or CG2026 11/93 or their equivalent are unavailable, then ISO CG2010A or CG20108 10/93 or their equivalent may be considered by the Contractor.

- Subcontract coverage (if requested by Contractor).
- An underwriting stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy."
- Coverage is to be on an "occurrence" basis. "Claims Made" and "Modified Occurrence" forms are not acceptable except where "Professional Liability Coverage" is required.
- An underwriting stating that any aggregate limits apply on a "per project" and on a "per location" basis.
- No exclusions relating to "residential construction" as it pertains to apartments. All certificates of insurance furnished to Contractor must contain a notation that the policy does not contain an apartment exclusion.

22. INDEMNIFICATION

Subcontractor shall protect, defend, indemnify and hold free and harmless Contractor, Owner and Lender, and their officers, directors, employees, representatives, and agents, from any and all obligations, liability, claims, demands, loss, damage, costs, expenses (including attorney fees and all costs to enforce this indemnification), or cause of action whatsoever (hereinafter referred to as "Claims") in any way connected with or arising out of or alleged to arise out of the performance by Subcontractor of the Job and this Subcontract, but not limited to, the following:

- Claims, including alleged defects in the construction of the Job, by the owner or future owners of the Property for damages to the Property (including loss of use thereof), the improvements thereon, and property appurtenant thereto, or any part thereof.
- Claims for personal injury, including but not limited to, bodily injury, death, emotional injury, sickness or disease, sustained by any person (including any employee or agent of Subcontractor, Contractor, Owner) or for property damage of any kind, caused or alleged to be caused in whole or in part by any act or omission of Subcontractor, his sub-subcontractors, suppliers or anyone directly or indirectly employed by anyone of them or anyone for whose conduct they may be liable, whether or not such injury or damage is caused by a party indemnified hereunder. The foregoing indemnity obligation of Subcontractor shall apply regardless of any active and/or passive negligence or willful misconduct of Contractor or Owner; however, such obligation shall not apply to Claims arising from the sole negligence or willful misconduct of Contractor or Owner or from defects in design furnished by Owner.
- Claims and loss for unpaid labor performed or materials used or furnished to be used on the Job, including all incidental or consequential damages resulting to Contractor from such claims or loss.
- Claims, fines or penalties that may arise from any violation or infraction by Subcontractor of any safety, employment or other governmental law, regulation, or order.
- In case any suit or other proceedings shall be brought against Contractor or any other party indemnified hereunder concerning any Claims to which Subcontractor's indemnity obligation applies, Subcontractor shall, upon demand by Contractor, assume the defense thereof and defend the indemnified party at Subcontractor's own expense, and Subcontractor shall pay all costs and any judgment that may be rendered therein against an indemnified party.
- Indemnity Not Limited - In any and all claims against the Indemnities by any employee of the Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whom not any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any Workers' or Workers' Compensation acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of this Contract and shall survive the expiration or termination of the Contract until such time as action or account of any matter covered by such indemnity is barred by the applicable statute of limitations.

29. **INDEPENDENT CONTRACTOR:** Subcontractor is an independent contractor and is solely responsible and liable for payment of all federal and state taxes and insurance and contributions for social security and unemployment which are measured by wages, salaries or other remuneration paid to Subcontractor's employees.

30. **CLEANUP AND STORAGE:** Subcontractor shall maintain, to the satisfaction of Contractor, all work areas in a clean, neat and safe condition and shall comply promptly with any instructions from Contractor with respect thereto. As the Job is completed, Subcontractor shall remove from the site thereof, to the satisfaction of the Contractor, all of Subcontractor's rubbish, debris,

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