EXHIBIT A
ESTERN NATIONAL CONSTRUCTION
STANDARD SUBCONTRACT AGREEMENT

This Agreement is entered into this 10th day of NOVEMBER 2000 between WESTERN NATIONAL CONSTRUCTION, a California Corporation, License No. 721205, with its principal office at 8 Executive Circle, Irvine, CA 92614, (949) 862-6200, FAX # 949-862-6252, hereinafter designated as "Contractor" and LOS NIETOS CONSTRUCTION COMPANY Contractors License No. 728971, City Business License __________ Federal Tax ID No __________ Sole Proprietorship/Partnership with principal office at 220 SAN FELIPE ST, POMONA, CA 91767, hereinafter designated as "Subcontractor".

RECITALS

A. Western National Construction ("Contractor") has contracted with Clikers Apartments LLC, ("Owner") to develop an apartment project (the "Project") upon real property of "Owner" (the "Property") described as:

ONE PEARL PLACE
6210 TERNER WAY
SAN JOSE, CA

This development and subdivision is to be in strict accordance with plans, specifications, lists of materials, sections, details, profiles, grading plans, deed restrictions, utility layouts and various other provisions set forth in various interrelated documents; all these documents are on file and available during business hours for inspection and reference at Contractor's principal office. Such documents are herein designated as "Contract Documents" and are incorporated herein by this reference. These Contract Documents are intended to supplement each other, and work described in one document but not in another shall nonetheless be executed as if such were contained in all documents. It is essential that the Subcontractor proceed in exact conformity with the applicable portions of the Contract Documents.

The Subcontractor has made an independent investigation on the job site, the soil conditions affecting the job site, and all other conditions which might affect the progress of the Work, and has satisfied itself as to these conditions. The contract price includes payment of all work which may be done by the Subcontractor in order to overcome unanticipated underground conditions. Any information which may have been furnished to the Subcontractor by the Contractor about underground conditions or other job conditions is for the convenience of Subcontractor only and the Contractor does not warrant that the conditions are as thus indicated. The Subcontractor has satisfied itself as to all job conditions, including underground conditions, and has not relied on information supplied by the Contractor.

B. Contractor desires to engage Subcontractor to perform certain work in connection with the Project.

IT IS MUTUALLY AGREED between the parties as follows:

1. DOCUMENTS. The "Contract Documents" are listed in Exhibit "A", and describe the work to be performed by the Subcontractor under this Agreement (the "Work"). Subcontractor acknowledges that it has examined and studied the Contract Documents and fully understands the character of the Work to be performed by it under the Contract Documents.

2. SUBCONTRACTOR'S INVESTIGATION. The Subcontractor acknowledges that it has made an independent investigation of the Job Site, and of all conditions which might affect the progress of the Work, and has satisfied itself as to these conditions. The Contract Price as set forth in Exhibit "B" includes payment for all Work which may be performed by the Subcontractor and anticipates all such conditions. Any information which may have been furnished to Subcontractor by Contractor about job conditions is for the convenience of Subcontractor only, and Contractor does not warrant that the conditions are as so indicated. Subcontractor agrees to perform in good and workmanlike manner, and to furnish all labor, materials (all materials shall be new unless otherwise specified by Contractor), supplies, equipment, and other facilities required for execution of the Work. Subcontractor shall be obligated to perform the Work in strict compliance with the Contract Documents and all applicable laws, ordinances, regulations and requirements.

3. COMMENCEMENT. Unless otherwise specified in Exhibit "A", Contractor shall give Subcontractor three (3) days advance notice of the date upon which the Subcontractor is to commence the performance of the Work.

4. CONTRACT PRICE. For the strict performance (and not merely substantial performance) by Subcontractor of all of its obligations under the Contract Documents, Contractor shall pay to Subcontractor the "Contract Price" set forth in the Exhibit "B" attached hereto. The Contract Price is intended to include all costs and all increases in costs, foreseen or unforeseen, including, without limitation, taxes, labor, material, and transportation costs, all of which are to be borne solely by the Subcontractor. All loss or damage arising from any Work performed under this Agreement through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same, or through the action of the elements, shall be borne by Subcontractor.

5. PAYMENTS TO SUBCONTRACTOR. So long as Subcontractor is not in default under this Agreement, payments will be made for Work completed as set forth below.

(a) Contractor agrees to make progress payments to the Subcontractor for Work completed, based upon the applicable pro rata portion of the Contract Price, less applicable retention (as set forth in the Exhibits "A" and "B" attached hereto), which payments shall be made in accordance with the Payment Processing Procedure set forth in the Exhibits "A" and "B". Final payment shall be made at such time as is specified in the Exhibits "A" and "B", or, if no such time is specified, thirty-five (35) days after recordation of notice of completion on the Project, so long as all grounds for withholding payments, enumerated under subparagraph (c) below, have been satisfied, and satisfactory proof that all claims, including taxes, growing out of the Work (and any liens related thereto) have been released. As used herein, the term "Project" includes the total construction of the apartment site, of which the Work performed under this Agreement is a part.

(b) The Subcontractor shall prepare and present to the Contractor, for its approval, an invoice in a form and in detail acceptable to Contractor, showing the amount due. Each such invoice shall be in conformance with the requirements set forth in the Exhibit "B" attached hereto, and shall contain the following: (i) a statement of the current Contract Price including approved Change Orders; (ii) the percentage of completion of the Work; (iii) the applicable retention; and (iv) the net amount due for the current period.

Contractor is not required to make any payment to Subcontractor unless Subcontractor shall previously have provided: (i) the Certificate of Insurance required under this Agreement; (ii) releases for the previous payment, executed by all persons who may have mechanic's lien, stop notice or labor and material bond rights against the project and arising out
of Work performed or materials supplied under this Agreement; (iii) upon Contractor's request, evidence reasonably satisfactory to Contractor of payment (as applicable) to all labor unions and union trust funds; (iv) applicable city or other governmental authority business license numbers; and, (v) Subcontractor's employer tax identification numbers.

(c) The Contractor may withhold progress payments, in whole or in part, in order to protect the Contractor from loss because of: (i) defective work not remedied, missing materials not furnished, clean-up not performed; (ii) claims filed or reasonable evidence indicating probable filing of claims, including claims covered by Subcontractor's insurance until such claims are accepted by carrier; (iii) failure of the Subcontractor to make payments property to his subcontractors and/or suppliers for labor, materials or equipment, transportation or shipping costs, taxes, fees, payments to labor unions and union trust funds or other claims growing out of the Work; (iv) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price; (v) damage to another subcontractor, or to Contractor; (vi) reasonable indication that the Work will not be complete on schedule; (vii) unsatisfactory prosecution of the Work by the Subcontractor; (viii) failure to deliver written guarantees or warranties; (ix) failure to obtain the approvals required by any authority having jurisdiction; or, (x) punch-list or pick-up work not performed. When the above grounds are removed by Subcontractor, payments shall be made for the amounts withheld because of them. Contractor may require that Subcontractor furnish releases in a form satisfactory to Contractor for all claims made under (c)(i) and (c)(ii), together with supporting invoices, receipts or other records or substantiate the amounts owing or paid as Contractor may require.

(d) 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 part of the Contractor and a release of Contractor in the amount of such order.

(e) Any payments made hereunder or advances made by Contractor prior to full completion and final acceptance of the Work shall not be construed as evidence of acceptance of any of the Work. Contractor shall have the right to make payments to Subcontractor hereunder, or under any material purchase order issued by Contractor to Subcontractor or relating to the Work, by checks payable jointly to Subcontractor and his subcontractors, suppliers, laborers, or any of them.

(f) Any and all funds payable to the Subcontractor hereunder shall constitute trust funds in the hands of the Subcontractor, to be applied to the payment of claims of his subcontractors, laborers and materialmen arising out of the Work, and to the payment of other costs, fees, expenses, premiums and taxes related to the Work, before application to any other purpose. Subcontractor agrees to furnish to Contractor and Contractor may refuse payment to Subcontractor unless and until Subcontractor furnishes to Contractor releases of claims of laborers, materialmen and subcontractors performing work or furnishing materials under this Subcontract, all in a form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, unless and until such releases are furnished.

6. LIST OF SUPPLIERS. Subcontractor shall within ten (10) days of execution of this Agreement provide to Contractor a list of names and addresses of all suppliers who will supply Subcontractor in connection with the Work. Subcontractor shall have no right to change the suppliers or use additional suppliers without first obtaining written permission of Contractor.

7. ADDITIONS, CHANGES AND MODIFICATIONS TO AGREEMENT. The terms and conditions of this Agreement are not subject to additions, modification or change, unless such addition, modification or change is made in writing by a duly authorized representative of Contractor ("Change Order"). Any additions, change or modification made by any other person or persons shall not be binding upon Contractor.

8. ADHERENCE TO PLANS AND SPECIFICATIONS. The Subcontractor shall adhere strictly to the plans and specifications and the other Contract Documents, and, where applicable, to the model homes, unless a Change Order is made. In such case, the terms of said Change Order shall be agreed upon in writing by the Subcontractor and Contractor before commencement of said Change Order. Additional Work or deviation from the plans and specifications performed without a Change Order will not be subject to reimbursement. Disputed Work indicated or necessary to complete the project shall be promptly performed as ordered by the Contractor and the proper cost or credit breakdowns therefor shall be submitted immediately thereafter to Subcontractor for consideration. Should the plans vary from the specifications, then the specifications shall govern. Should there be any discrepancy between the plans, the specifications, the model homes, or any of them, and any governmental laws or regulations, then those which are more stringent shall govern. Contractor does not assume any responsibility for failure of the plans or specifications to meet with governmental laws or regulations. If any of the Contract Documents provide for a method of work contrary to any such laws and regulations, Subcontractor shall be required to notify Contractor, in writing, prior to the installation of the Work.

9. EXTRAS. Contractor may at any time during the progress of the Project, order in writing changes, additions or modifications to the plans and specifications in accordance with Paragraph 7 hereof and the same shall not void this Agreement. Unless otherwise requested by Contractor in writing. Subcontractor, prior to commencement of revised Work, shall submit within seven (7) days to the Contractor written copies of Subcontractor's cost or credit proposal for such revised Work. Subcontractor will support all claims for extras with a detailed breakdown showing differences in quality, and value of labor and material involved. The Construction Sequence or Order of Work (as defined herein) and any progress schedule established by Contractor will remain fixed, unless expressly otherwise directed by Contractor. If the time is extended, all added costs for same must be included in the original claim for the changes, otherwise such added costs will not be subject to reimbursement.

Should the Contractor elect to have any extra Work performed on a time and material basis in lieu of unit prices or for a negotiated lump sum, and so notifies the Subcontractor in writing, the Subcontractor will perform the Work at his actual net cost plus overhead and profit, with or without a maximum guarantee total cost, at the Contractor's option. The Subcontractor's markup for overhead and profit will not exceed ten percent (10%) (including field supervision, tools and equipment) unless agreed to by the Contractor in advance of the commencement of such work. Unit prices include all costs plus overhead and profit of the Subcontractor.

INITIALS: Contractor [Signature] Subcontractor [Signature]

Cost Code: 05-570-3125/3127

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10. START AND FINISH OF THE WORK.

(a) On or before three (3) days before Subcontractor will be required to commence the Work, Contractor will deliver to Subcontractor a general "Construction Sequence" or "Order of Work". The Subcontractor agrees to undertake and complete the Work in accordance with the Construction Sequence or Order of Work established by the Contractor. The Construction Sequence or Order of Work shall be subject to change by the Contractor as deemed necessary or convenient to the overall progress of the project. Contractor may, from time to time, establish specific requirements or schedules for the pace and rate of performance of the Work of Subcontractor under this Agreement, including, without limitation, benchmark dates or intermediate completion dates for various portions of the Work, final completion dates for the Work, specific numbers of units to be completed within a given time period, and numbers of qualified workers necessary, as determined by Contractor, to maintain the pace or rate of work established by Contractor. Subcontractor acknowledges its understanding that Contractor, in entering into this Agreement, is relying on Subcontractor's ability to perform the Work at the pace or rate as may be established by Contractor from time to time. Subcontractor agrees that it will keep itself continually informed of the progress of the job and will, upon its own initiative, confer with the Contractor so as to plan his Work in coordinated sequence with the work of the Contractor and of others and so as to be able to expeditiously perform its Work at the time most beneficial to the entire project; however, Subcontractor shall not proceed with any phase of its Work ahead of the time designated by the Contractor unless authorized by Contractor. SHOULD CONTRACTOR'S WORK SCHEDULE BE CHANGED, SUBCONTRACTOR WILL PROCEED IN STRICT ACCORDANCE WITH CONTRACTOR'S DIRECTION. Contractor shall have the right to decide the time or order in which the various portions of the Work shall be installed or the priority of the work of other trade contractors, and, in general, all matters respecting the timely and orderly conduct of the work of trade contractors on the Job Site. If the project is divided into parts, Subcontractor will perform several or all parts simultaneously, if required by Contractor.

It is specifically understood that Subcontractor herein agrees and hereby guarantees to complete his phase of operation at a production rate specified in EXHIBIT "A", being prepared to do what ever is necessary including overtime in order to complete said Work on schedule. Subcontractor further agrees to maintain their production rate during the entire tenue of times Subcontractor is working on the Job site.

The production rate specified in EXHIBIT "A" shall be increased or decreased at the discretion of the Contractor's Project Superintendent.

Subcontractor further agrees and understands that the production schedule established by the Contractor is based on six (6) days a week, Monday through Saturday.

(b) If the Contractor is not in default in any of the provisions herein, and in order to expedite the final completion of the project or general or special work thereon the Contractor directs Subcontractor to work overtime, it is agreed that Subcontractor shall work overtime, and it is understood that Contractor is to pay only the actual extra cost over the rate for regular time of overtime. Time slips covering overtime must be checked and approved daily by the Contractor's authorized agent. No overhead or profit is to be charged by the Subcontractor for overtime.

(c) If the Subcontractor is behind in the Work, fails or refuses to supply sufficient workers, or to deliver materials or equipment on schedule, and delays progress of the Work; or if the different parts thereof are not commenced, performed, finished and delivered at the time established by Contractor, Contractor shall have the right to direct the Subcontractor, within twenty-four (24) hours after notice from Contractor, to furnish additional labor and expedite deliveries of material and equipment at Subcontractor's cost and expense. If such additional labor is not available, the Contractor has the right to require Subcontractor at Subcontractor's cost, to work overtime or additional shifts (and/or weekends and holidays) to such an extent as will be sufficient to speed up and complete the Work on schedule. Should the work schedule be changed, Subcontractor will proceed in strict accordance with Contractor's directions.

(d) Without in any way limiting or waiving Contractor's rights and remedies pursuant to this Agreement, if at any time during the progress of the Work, Contractor, Contractor's designated representative or Contractor's architect/engineer determines that Subcontractor is leaving excessive amounts of punch-list or pick-up work, Contractor may direct Subcontractor to cease work on any or all portions of the project and to immediately perform all necessary punch-list or pick-up work related to Subcontractor's Work under the Agreement.

11. INSPECTIONS AND APPROVALS. The Work shall be subject to inspection and approval by the Contractor, Contractor's designated representative, Contractor's architect/engineer and governmental authorities. Subcontractor shall be required to furnish, for the approval of the Contractor, Contractor's architect/engineer and governmental authorities such samples, shop drawings and patterns, as may be required for the Work, and all Work shall be in accordance therewith. Contractor shall be afforded access to Subcontractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement, and Subcontractor shall preserve such records for a period of three (3) years, or for such longer period as may be required by law, after the final payment to Subcontractor.

12. LINES, GRADES AND MEASUREMENTS. Subcontractor assumes full responsibility for the accuracy of all lines, levels and measurements and their relation to bench marks, property lines, reference lines and the work of the Contractor or other trade contractors. 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 from Contractor. All work shall be made to conform to actual, final conditions as they develop in the course of construction.

13. RELATED WORK. By commencing Work, Subcontractor acknowledges that all related, adjacent or dependent work, services, utilities or materials are acceptable to him and waives any and all claims for damage or extras with respect to defects or failure thereof.

INITIALS: Contractor _____________ Subcontractor _____________

Cost Code: 05-570.3125/3127
14. ** INTERRUPTION OF WORK.** If, as a result of fire, earthquake, acts of God, war, strikes, picketing, boycott, lockouts, or other causes or conditions beyond the control of Contractor, or if Contractor shall consider it inadvisable to proceed with the Work, then Subcontractor shall, upon receipt of notice from Contractor, immediately discontinue any further Work until such time as Contractor may deem it advisable to resume the Work. Subcontractor will resume the Work within twenty-four (24) hours after receiving 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.

15. **CORRECTIONS OF DEFECTS IN MATERIAL OR WORK.** All defects in materials used or Work performed as designated by Contractor, Contractor’s designated representatives, Contractor’s architect/engineer or governmental authorities, upon inspection and brought to the attention of Subcontractor shall be corrected by Subcontractor to the satisfaction of Contractor, and Contractor’s architect/engineer and governmental authorities, at Subcontractor’s cost. Subcontractor shall commence such corrective work within twenty-four (24) hours after notice to Subcontractor, and shall diligently and expeditiously pursue such corrective work to completion. Should any dispute arise as to the quality of Subcontractor’s workmanship or the quality of materials furnished, the reasonable decision of Contractor, Contractor’s designated representative or Contractor’s architect/engineer, shall be binding.

16. **DAMAGE TO WORK.** Should Subcontractor damage the work or installations of Contractor or any other trade contractor, Subcontractor shall promptly pay to Contractor or such trade contractor, as the case may be, all costs incurred in repairing the damage. Subcontractor shall take all action necessary to insure that his suppliers do not damage curbs and sidewalks.

17. **GUARANTEE.** The Subcontractor guarantees all materials and workmanship and agrees to replace at his sole cost and expense and to the satisfaction of the Contractor and Contractor’s architect/engineer, any materials adjudged defective or improperly installed, and guarantees the Contractor against liability, losses or damage to any or all parts of the Work arising from said installation during a period of one (1) year from the date of occupancy of such building or unit constructed hereunder. If, however, the period of guarantee is stipulated in excess of one (1) year by the Contract Documents, Subcontractor shall be bound as specified. All guarantees, including equipment warranties, will inure to the benefit of the Contractor and any successor in interest to Contractor. During the warranty period, a period of twenty-four (24) hours after notification by Contractor shall be allowed for response and corrective action. After the twenty-four (24) hour period, the problem may be corrected by Contractor and the Subcontractor will be back-charged a fifteen percent (15%) overhead. Emergencies will be corrected by Subcontractor immediately. Subcontractor agrees that upon notification of defects from Contractor, Subcontractor shall proceed within twenty-four (24) hours with due diligence, at his own expense, to replace any defective material or perform any labor necessary to correct any defect in the Work. Nothing contained herein shall be deemed to limit Subcontractor’s liability or responsibility for latent defects or structural defects, or to limit any statutory or implied warranties, or any other rights or remedies of Contractor.

18. **TERMINATION OF AGREEMENT.**

(a) Upon notification from Contractor by telegram or by written notice that Subcontractor’s performance under this Agreement is unsatisfactory, or upon notification that Subcontractor has failed to comply fully with the terms of this Agreement, or that Subcontractor’s Work needs correction or has been damaged, Subcontractor shall promptly take all actions necessary to fully comply with the terms of the Contract Documents and the requirements of Contractor. Should Subcontractor fail to do so within twenty-four (24) hours after such notification Contractor may terminate this Agreement. In the event of such termination, Subcontractor hereby authorizes Contractor to perform and complete the Work and in connection herewith. Contractor may (a) eject Subcontractor, (b) take possession of all of Subcontractor’s materials, tools and equipment on the Job Site, and (c) secure materials and employ workers necessary to complete the Work at Subcontractor’s expense. Subcontractor shall not be entitled to receive any further payment until completion of the entire project and then only after the direct and indirect costs incurred by Contractor to complete Subcontractor’s Work have been determined. The direct and indirect costs shall apply against the Contract Price, and, if in excess of the balance due Subcontractor, the amount of the excess shall be a debt immediately due and owing from Subcontractor to Contractor. If the balance due Subcontractor is in excess of the direct and indirect cost, such excess shall be paid to Subcontractor within thirty-five (35) days after completion of the entire project.

(b) Contractor reserves the right to terminate this Agreement in the event that the project or a material portion thereof is destroyed by fire or other catastrophe. In the event of such termination, Subcontractor shall be entitled only to payment in the lesser amount of either, (a) actual and reasonable labor and materials costs for Work actually completed plus ten percent (10%) of such costs for field supervision, overhead and profit, or (b) a pro-rata portion of the Contract Price which reflects the portion of Work actually completed in proportion to the Contract Price. There shall be deducted from such sums as provided in this Paragraph the amount of any payments made to Subcontractor prior to the date of termination of this Agreement. Subcontractor shall not be entitled to any claim against Contractor for any additional compensation or damages in the event of such termination. This Agreement may at Contractor’s election become null and void and of no effect in the event financing for the project is or becomes unavailable, or if for any reason beyond its control, Contractor shall be unable to undertake the project or any portion thereof.

(c) Subcontractor and Contractor acknowledge and agree that Contractor’s continued confidence in the ability of Subcontractor to properly and expeditiously perform its work is a substantial and material concern to Contractor. Consequently, in the event Contractor and Subcontractor enter into or have entered into any other agreements, and Subcontractor defaults under this Agreement or any other agreements, Contractor may, at Contractor’s election, treat a default under this Agreement as a default under any other agreements, and Contractor may, at its election, treat a default under any other agreement as a default under this Agreement.

(d) If at any time during the performance by Subcontractor of his duties and obligations under this Agreement Contractor becomes dissatisfied with the progress of performance of Subcontractor, regardless of whether the causes for Contractor’s dissatisfaction would otherwise constitute a default by the Subcontractor, Contractor may, at its election, declare remaining contracts for the project null and void, or, if this Agreement relates

INITIALS: Contractor ____________ Subcontractor ____________
to a multi-phase project, Contractor may elect to reduce the scope of the Work to be performed by Subcontractor hereunder to the phase then in progress, or in the event the provisions of this Agreement relating to subsequent phases shall become null and void, and Contractor's sole obligation to Subcontractor shall be for payment to Subcontractor of the amounts which would be paid to Subcontractor in the event of a termination of this Agreement as a result of destruction, as described in Paragraph 18(b) above.

(e) Contractor shall have the right, at any time, acting in its sole discretion, with or without cause, to terminate Subcontractor's rights under this Agreement by giving to Subcontractor written notice of termination. A termination effected under this paragraph shall take effect at the time specified in such notice, and Contractor's sole obligation to Subcontractor shall be for payment to Subcontractor of the amounts which would be paid to Subcontractor in the event of the termination of this Agreement as a result of destruction as described in Paragraph 18(b) above.

19. REMOVAL OF WORK CONDEMNED. The Subcontractor shall, within twenty-four (24) hours after receipt of written notice from the Subcontractor remove from the Job Site any materials or portions of the Work condemned by the Contractor or any applicable governmental authority, as unsound or improper, or which fail to conform to the Contract Documents, and shall make good all work in other trades damaged by such removal. In the event that all or any portion of the Work so condemned shall be of such a nature, that in the judgment of the Contractor it will not be expedient to order the same replaced or corrected, the Contractor may at his option, and in addition to any other remedies available to Contractor deduct from the payments due or to become due to the Subcontractor an amount equal to the difference between the fair and reasonable value of the Work so condemned and its value had the Work been executed in conformity with the Contract Documents.

20. DEFENSE OF PATENTS. The Subcontractor shall defend all suits or claims for infringement of any patent rights that may be brought against Owner, Contractor or Contractor's architect/engineer arising out of the Work, and shall hold Owner, Contractor and Contractor's architect/engineer harmless from loss on account thereof, except that the Subcontractor shall not be responsible for such loss when a particular process or product of a particular manufacturer or manufacturers is specified by Owner, Contractor or Contractor's architect/engineer and Subcontractor is unaware of any infringement.

21. CUTTING, FITTING AND PATCHING, WORK OF OTHERS. The Subcontractor shall do all cutting, fitting and patching of his Work that may be required to make its several parts come together properly, and to fit it to receive or be received by the work of other trade contractors, shown upon 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 trade contractor on the project, the Subcontractor shall, upon notice, compensate such trade contractor to the extent of any such damage.

22. CLAIMS FOR DELAY OR DAMAGE. Subcontractor expressly waives any and all rights to make claims or to be entitled to receive any compensation or damages for failure of Contractor or other trade contractors to have related portions of the project completed in time for the Work of Contractor to proceed. Should the Subcontractor default in the proper performance of his Work including, without limitation, performance of punch-list or pick-up work, thereby causing delay to the project, Subcontractor shall be liable for any and all loss and damages to Contractor, including, without limitation, liquidated damages, increased financing and construction costs, lost sales opportunities and lost revenues sustained by the Contractor. The Subcontractor shall be liable under this Paragraph even though such default is caused by strikes, lockouts, acts of God, or other reasons beyond the control of Subcontractor, unless the Subcontractor gives written notice of the delay to Contractor within four (4) days following the start of the alleged occurrence. Contractor shall not be liable to Subcontractor for loss or damages resulting from the aforementioned causes, or for Contractor's delay, or for modification or extension of the Construction Sequence or Order of Work of modification of the pace of work, or modification or extension of any progress schedule established by Contractor, or for losses or damages resulting from Change Orders, or for delays caused by other trade contractors.

23. INSURANCE. Subcontractor shall purchase and maintain with an insurer or insurers acceptable to Contractor, policies of insurance which will protect Subcontractor, Owner, Contractor and any applicable lender or any other party having an interest in the Work, the Project and/or Property, from claims which arise out of or result from Subcontractor's actions or inactions relating to this Agreement, whether such be by Subcontractor, by any employees, agents, subcontractors, sub-subcontractors or assigns of Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

(a) statutory worker's compensation and employer's liability with limits of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit bodily injury liability per occurrence, including an endorsement evidencing a "Waiver of Subrogation";

(b) commercial general and auto liability insurance with limits of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit bodily injury and property damage liability per occurrence, including: (i) any autos or all owned, scheduled, non-owned and hired vehicles, (ii) blanket contractual, (iii) broad form property damage, including completed operations, severability of interest and cross liability clauses, (iv) products/completed operations (maintained for the (10) years after Contractor's acceptance of the work), (v) personal & advertising injury, (vi) owner's & contractor's protective, (vii) premise/operations, (viii) occurrence basis, (ix) fire damage, (x) medical, (xi) collapse and underground hazards (x, c, u). The commercial general liability policy shall contain an endorsement naming Contractor and the parties specified in Section 1.3 of Exhibit C as additional insureds.

(c) aircraft liability insurance, if the work involves aircraft, with limits and coverage acceptable to Contractor, including owned and non-owned aircraft. Waiver of subrogation is required on hull coverage; and

(d) professional errors and omissions liability insurance, if applicable, with limits and a deductible provision which are acceptable to Contractor. Such insurance shall be maintained during the term of this Agreement and renewed for a period of at least five (5) years thereafter.

INITIALS: Contractor [ ] Subcontractor [ ]
The policy of insurance required in (b) above, shall also contain an endorsement that as respects the work and/or performance of Subcontractor, such policy or policies are primary and any insurance carried by the additional insureds are excess and non-contributing with such primary insurance; shall state that not less than thirty (30) days written notice shall be given to Contractor prior to cancellation or reduction in coverage or amount, and shall waive all rights of subrogation against the additional insureds. Prior to commencing the Work, Subcontractor shall deliver to Contractor the endorsements and certificates of insurance as evidence of compliance with the requirements of this Paragraph 23. In the event Subcontractor fails to secure or maintain any policy of insurance required hereby, Contractor may, at its sole discretion, secure such policy of insurance in the name of and for the account of Subcontractor and, in such event, Subcontractor shall reimburse Contractor upon demand for the cost thereof. Subcontractor's satisfaction of its obligations to maintain insurance as specified herein shall not be construed to be a limitation of liability on the part of Subcontractor of any liability or responsibility under this contract or as a matter of law. All insurance carriers issuing any insurance required hereby shall be as specified in EXHIBIT "C", "Insurance Requirements and Billing Instructions".

24. INDEMNIFICATION BY SUBCONTRACTOR

(a) The insurance maintained by Subcontractor in accordance with Section 23 shall insure the performance of Subcontractor's indemnification obligations as set forth herein. All work (whether performed by Subcontractor or its Sub-subcontractors) covered by the Subcontract documents done at the job site, or in preparing, storing, or delivering materials, tools, equipment or any other type of personal property, or in providing services for the Project, or any or all of them, to or for the Project, shall be at the sole risk of Subcontractor. In addition to and without limiting Subcontractor's indemnification obligations pursuant to Sections 17, 20 and 30, Subcontractor shall, to the fullest extent permitted by law with respect to all such Work that is covered by or incidental to the Contract documents, defend all claims through legal counsel reasonably acceptable to Contractor and the additional insureds, and indemnify and hold harmless Contractor, Cilker Apartments LLC, and all of their respective divisions, subsidiaries, members, partners and affiliated companies and all of their respective employees, officers, directors, shareholders, agents and representatives, and all of their respective successors and assigns (collectively, the "Indemnitees") from and against any losses, liabilities, damages, injuries, claims, expenses (including actual attorneys' fees) and costs (collectively, "Claims") whether incurred by or made against any Indemnitee, arising from or related to (i) performance of any or all work which is covered by or incidental to the Subcontract documents, including without limitation, (A) any defect in construction, grading, work or other work performed by or on behalf of Subcontractor, its Sub-subcontractors or any of its or their respective employees, officers, agents, suppliers, representatives, permittees or invitees or any other person or entity claiming under or through Subcontractor or any Sub-subcontractor (collectively, "Subcontractor's Representatives"), (B) any defect, error or omission in any of the Contract documents, or any Plan or Report, or any report, plan, drawing, opinion, survey, specification or design (collectively, "Plans & Reports") completed by or at the request of Subcontractor or any of Subcontractor's Representatives and utilized in the Work and any defect, error or omission in any Plans and Reports prepared by any other person or entity which Subcontractor failed to discover or report to Western National Construction as a result of Subcontractor's negligence or breach of its obligations hereunder, (C) and death or bodily injury to persons or injury or damage to property involving Subcontractor or any of Subcontractor's Representatives on the Project site or relating to the Project, and (D) any use or misuse by Subcontractor or any of Subcontractor's Representatives of the Project site, the improvements thereon or any part thereof, (ii) any negligent act or failure to act or any act which constitutes willful misconduct by Subcontractor or any of Subcontractor's Representatives, (iii) any violation or alleged violation by Subcontractor or any of Subcontractor's Representatives of any law now or hereinafter enacted, or (iv) the breach by Subcontractor of any of its obligations under the Contract Documents.

It is the intention of the parties that Subcontractor is providing a "Type I indemnity under California law; provided, however, Subcontractor shall not be obligated to indemnify any Indemnitee for any Claim found by a court of competent jurisdiction to have been caused by the sole negligence or willful misconduct of such Indemnitee. Payment of any Claim by the applicable Indemnitee shall not be a condition precedent under this indemnity.

In any and all claims against the Indemnitees by any employee of Subcontractor, any Sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 24 shall not be limited in any way to any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor or any Sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of the Contract or, if later, during Subcontractor's performance, and shall survive the expiration or termination of the Contract until such later time as (i) action on account of any matter covered by such indemnity is barred by any applicable statute of limitations, or (ii) such date as any Claim or action for which indemnification may be claimed is fully and finally resolved and, if applicable, any compromise thereof or judgment or award thereon is paid in full by Subcontractor and Contractor or the applicable Indemnitee is reimbursed by Subcontractor for any amounts paid in compromise thereof or upon a judgment or award thereon and in defense of such action or Claim, including actual attorneys' fees, or (iii) upon the first sale of a condominium unit in the Project to a third party (the Project having been converted to condominiums), irrespective of the identity of the then owner of the Project.

(c) Subcontractor, as a material part of the consideration of this Contract, waives on its behalf, except to the extent occasioned solely by the willful or negligent acts of Contractor, its agents or employees, all claims and demands against Contractor for all loss, damage, injury, sickness or death of any person, and all other claims of any kind or character to any person or property directly or indirectly arising out of or resulting from Subcontractor's presence at the site or performance of this Contract or the commencement, prosecution and completion of the Work.

INITIALS: Contractor __________ Subcontractor __________

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25. INDEPENDENT CONTRACTOR RELATIONSHIP. The relationship of Subcontractor to Contractor shall be that of an independent contractor. Subcontractor shall provide a qualified superintendent or foreman to act as the representative of Subcontractor on the Job Site, who is authorized to receive orders, to make decisions regarding the Work, and be responsible for the total scope of Work included in this Agreement. Such superintendent or foreman shall at all times be satisfactory to Contractor and shall not be changed without the consent of Contractor. If such superintendent or foreman is unsatisfactory to Contractor, Subcontractor shall promptly replace him.

26. CLEAN UP. At all times during the course of construction, Subcontractor shall perform his Work so as to maintain the Job Site in a clean, safe and orderly condition. Subcontractor shall perform any and all clean up duties as may be specified in the attached "Exhibit A". If Subcontractor fails to perform a clean up function within twenty-four (24) hours after notification from Contractor to do so, Contractor may proceed with such clean up, and the cost thereof shall be charged to Subcontractor and deducted from monies due under this Agreement.

27. USE OF CONTRACTOR'S EQUIPMENT. The use of any of Contractor's equipment by Subcontractor given loaned or furnished by Contractor to Subcontractor, shall be upon the understanding that Subcontractor uses the equipment, at his own risk and takes the same "as is", and Subcontractor assumes all responsibility for and agrees to hold Contractor harmless from any claims or damages whatsoever resulting from the use thereof, whether such damage results to Subcontractor or his own employees or properties or to other persons or the employees or property of other persons. Nothing herein contained shall be deemed to permit any such use by Subcontractor without the prior written consent of Contractor.

28. PERMITS AND LAWS. Subcontractor shall promptly obtain, at his expense, and before commencing the Work, all permits and licenses required for the Work or as specified in the Exhibit A attached hereto, and Subcontractor shall exhibit each such permit or license to Contractor upon Contractor's request.

29. ASSIGNMENT. Subcontractor shall neither assign nor subcontract the whole or any portion of this Agreement or the payments hereunder without first obtaining permission in writing from Contractor, and then only subject to, and upon the same terms and conditions of, the provisions of this Agreement. Any permission granted by Contractor shall not be deemed permission to any subsequent assignment. Any assignment by Subcontractor made without the consent of Contractor as herein provided shall be null and void and shall, at the option of Contractor, be grounds for termination of this Agreement have the right to elect to proceed pursuant to Paragraph 18 hereof. Any such subcontractor shall contain all of the provisions of this Agreement and shall require the subcontractor thereunder to be directly liable to Contractor in all respects as herein required of Subcontractor. No assignment shall relieve Subcontractor from his duties, obligations and liabilities hereunder, unless specifically relieved in writing by Contractor.

30. LIENS. Subcontractor shall pay when due all claims for labor or material incurred by him in the performance of this Agreement. If any liens, attachments, or suits affecting title to real property are filed against the project, the Property or any portion thereof in connection with claims for labor or material incurred by Subcontractor in the performance of this Agreement, Subcontractor shall within ten (10) days after written demand by Contractor, cause the effect of such lien, attachment or suit to be removed from the project, the Property or any portion thereof, and Subcontractor shall indemnify, defend and hold Owner, Contractor and the Property harmless from and against any and all liability and claims made in connection therewith, including, without limitation, any costs and expenses for attorneys' fees, bond premiums and all incidental and consequential damages resulting therefrom. In the event Subcontractor shall fail to promptly cause the effect of any such lien, attachment or suit to be so removed, Contractor is hereby authorized to use whatever means it may deem best to cause the lien, attachment or suit, together with its effect upon the title, to be removed, discharged, satisfied, compromised or dismissed, and the cost thereof, including attorneys' fees incurred by Owner and Contractor, shall become immediately due from Subcontractor to Owner and Contractor. Subcontractor may contest any such lien, attachment or suit, provided he shall cause the effect thereof to be removed from the project, the Property or any part thereof.

Should Subcontractor fail to make any payments required under this Paragraph, Owner or Contractor may make such payments on behalf of Subcontractor, and Subcontractor shall, on demand reimburse Contractor for the amount actually paid, but Owner or Contractor shall not be entitled to collect any greater amount from Subcontractor than the amount actually paid under this Paragraph.

31. TAXES. The contract price stated herein includes the payment by Subcontractor of any taxes under California Sales or Use Tax Law, or any amendments thereto, or any law now existing, or which may thereafter 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.

32. INSOLVENCY, DEATH OR BANKRUPTCY. If in the event Subcontractor becomes insolvent, is unable to pay his obligations as they become due, or files a petition in bankruptcy, this Agreement may be terminated at the option of Contractor. Subcontractor hereby authorizes all financial institutions, materialmen and individuals to disclose to Contractor Subcontractor's financial status, credit and manner of meeting obligations. If Subcontractor is a sole proprietor, his death shall automatically terminate this Agreement.

33. TITLE. The title to all Work completed and in the course of construction and all materials on the Job Site shall, as between Subcontractor and Contractor, be in Contractor.

34. RIGHT TO DEMAND BOND. The Contractor has the right, at its expense and at any time, to require the Subcontractor to furnish the Contractor with a Performance bond and/or a Labor and Material Bond required by a surety company satisfactory to Contractor, and which guarantees performance of this Agreement by the Subcontractor and payment of all mechanics' lien claims which may arise out of such performance. Contractor will pay the premium of any such bond, and if the Subcontractor is unable to deliver the bond within ten (10) days after notice to do so from Contractor has the right to terminate this agreement.

INITIALS: Contractor Subcontractor

Cost Code: 05-570-3125/3127
35. **NO DELAY.** Notwithstanding the fact that a dispute, controversy or question shall have arisen in the interpretation of any provision of the Contract Documents, the performance of any Work, the delivery of any material, the payment of any monies to Subcontractor, or otherwise, the Subcontractor agrees that it will not directly or indirectly stop or delay any Work or part of Work on Subcontractor’s part required to be performed, or stop or delay the delivery of any materials on its part required to be furnished hereunder, pending the determination of such dispute or controversy, regardless of whether such controversy, dispute or question is subject to arbitration, litigation or judicial reference proceeding.

36. **DISPUTE RESOLUTION.** At the sole election of Contractor, any claim, dispute or controversy arising out of this Agreement, whether relating to breach or interpretation of this Agreement, may be heard and determined by a judicial reference pursuant to the provisions of Section 638 of the California Code of Civil Procedure or by arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

37. **LABOR RELATIONS.** Subcontractor agrees that at all times during the performance of the Work under this Agreement, Subcontractor shall maintain labor relations policies satisfactory to Contractor in Contractor’s sole discretion. Subcontractor agrees that if the status of Subcontractor’s labor relations change from the manner in which they existed as of the date of this Agreement, Subcontractor shall immediately notify Contractor. Contractor may terminate this Agreement immediately upon any change in the labor relations policies maintained by Subcontractor, and in the event of such termination, Contractor’s sole obligation to Subcontractor shall be for payment to Subcontractor of the amounts which would be paid to Subcontractor in the event of a termination of this Agreement as a result of destruction, as described in Paragraph 10(b) above. Subcontractor recognizes that in the performance of the Work, it will be required to work side by side with other trade contractors on the Job Site, who may or may not be signatory to collective bargaining agreements with labor organizations. Contractor reserves the right to establish a “two gate” system (union trades and non-union trades) at any time during the course of work on the project. Subcontractor shall not be relieved of its obligations to supply sufficient, properly skilled workers to perform the Work without delay or interruption as a result of any labor dispute or grievance between Subcontractor and its employees. Subcontractor represents and warrants that it is not delinquent in making payments or reports to any union fringe benefit trust fund and that it does not appear on any delinquency list published by any union fringe benefit trust fund. In the event Subcontractor becomes delinquent in such payment, or appears on any such delinquent list, such event shall be deemed to be a material default under this Agreement, thereby entitling Contractor to exercise any rights and remedies available to it under the Agreement. Subcontractor agrees to indemnify, defend and hold the Contractor harmless from claims, demands and liability for union fringe benefit trust fund obligations arising out of Subcontractor’s Work on the project.

38. **SAFETY LAWS, HAZARD COMMUNICATION STANDARDS, PROPOSITION 65 AND SAFE PRACTICES COMPLIANCE.** Subcontractor and its subcontractors and suppliers shall, at their own cost and expense, protect their employees, employees of Contractor and/or Owner and all other persons from risk of death, injury, or bodily harm arising out of or in any way connected with the work to be performed hereunder, and Subcontractor and/or its subcontractors/suppliers shall strictly comply with all safety orders, rules, regulations or requirements of all federal, state and local governmental agencies exercising safety jurisdiction over said work, including, but not limited to, the federal and state OSHA Regulations, and shall comply with all of Contractor’s safety requirements, policies and rules.

(a) Subcontractor acknowledges that it and its subcontractors/suppliers will be subject to the California Hazardous Substances Information and Trading Act (Labor Code Sections 6360-6399.7), and regulations enacted pursuant thereto, and Section 1926.59 of Title 29 of the Code of federal Regulations (collectively the “Hazard Communications Standards”). In particular, Subcontractor and its subcontractors/suppliers shall develop and implement, at their sole expense, the written hazard communication program required thereunder. In circumstances where work of the Subcontractor or its subcontractors/suppliers may result in others’ employees being exposed to hazardous chemicals associated with that work (as defined in the Hazard Communication Standards), Subcontractor shall notify Contractor concerning these chemicals, and specifically shall supply Contractor with each Material Safety Data Sheet (MSDS) on all hazardous materials the Subcontractor of its subcontractors/suppliers may introduce to the jobsite on a form acceptable to Contractor. Subcontractor and its subcontractors/suppliers are required to acquire and review copies of the Hazard Communication Standards and the regulations and requirements enacted pursuant thereto.

(b) Subcontractor acknowledges that it and its subcontractors/suppliers will be subject to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) and regulation enacted pursuant thereto to provide clear and reasonable warnings to their employees and others of potential exposure to a chemical known to the State of California to cause cancer or reproductive toxicity, notwithstanding any provision exempting Subcontractor or its subcontractors/suppliers on the basis that they have less than ten (10) employees. Subcontractor and its subcontractors/suppliers are required to acquire and review copies of Proposition 65 and the regulations and requirements enacted pursuant thereto.

(c) All Subcontractor foremen are required to make daily safety inspections to determine unsafe practices, unsafe equipment and any violations of safety laws, regulations, safety orders, rules or requirements.

(d) All Subcontractor supervisory personnel (superintendents, foremen, etc...) shall be responsible for preparing written reports on any accident occurring to an employee of the Subcontractor or its subcontractors/suppliers. A copy of the accident report shall be transmitted to the Contractor’s Project Superintendent in charge of the project. Each accident report shall be on a form provided by, or acceptable to, the Contractor.

INITIALS: Contractor [Signature] Subcontractor [Signature]

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(e) Subcontractor acknowledges that it and its subcontractors/suppliers will be subject to Labor Code Section 6401.7 and regulations enacted in furtherance thereof, including, but not limited to, Sections 1509, 1510 and 3203 of Title 8 of the California code of Regulations and all successor statutes and regulations. In particular, Subcontractor and its subcontractors/suppliers will, at their sole expense, establish, implement, and maintain a written injury and illness Prevention Program and Code of Safe Practices. In particular, Subcontractor and its subcontractors/suppliers will: (1) conduct periodic meetings of supervisory employees to discuss safety problems and accidents that have occurred and (2) require their supervisory employees to conduct "tailgate" or "toolbox" safety meetings, or equivalent, with their crews at least every ten (10) working days to emphasize safety and safe working practices.

(f) Subcontractor and each of its subcontractors/suppliers shall maintain a "Log of Occupational Injuries and Illnesses" for their respective employees.

(g) If Subcontractor and its subcontractors/suppliers do not comply with all safety requirements to the Project, Contractor may, but shall not be obligated to, give written notice of violation to the Subcontractor. Subcontractor shall cause its performance to come into compliance with such safety requirements within twenty-four (24) hours after such written notice has been presented to Subcontractor (or, in the event compliance cannot be completed within twenty-four (24) hours, Subcontractor shall immediately commence and continue such effort as may be necessary to obtain a reasonable time from commencement). If Subcontractor does not take such steps to come into compliance, then such failure shall be deemed a material default.

39. ENVIRONMENTAL COMPLIANCE

(a) Subcontractor and its subcontractors/suppliers shall use, handle, transport and dispose of all Hazardous Materials in compliance with all present and future federal, state and local environmental, health or safety law, including, but not limited to, all statutes, regulations, ordinances, codes, and rules of common law. Subcontractor further agrees that Subcontractor and Subcontractor’s subcontractors/suppliers shall not cause the discharge, release or disposal of any Hazardous Materials on the Site. In addition to the obligations set forth herein, Subcontractor and its subcontractors/suppliers shall, upon completion of performance of all duties under this Agreement, remove all materials, supplies and waste containing any Hazardous Material from the jobsite. Subcontractor shall bear full financial responsibility, as between the parties to this Agreement, for the compliance of the Subcontractor and its subcontractors/suppliers with the provisions of this paragraph 39. Subcontractor agrees to indemnify, defend (pursuant to the terms of the Agreement), protect and hold Contractor and Owner harmless from and against any liabilities, costs, claims, damages, fines, penalties or expenses, including actual attorney’s fees and costs of investigation, soils testing, governmental approvals, remediation and clean-up arising out of or in any way connected with the failure of the Subcontractor or its subcontractors/suppliers, their agents, employees, officers, or representatives, to comply with this paragraph 39. Should Subcontractor or its subcontractors/suppliers discharge, release or dispose of any Hazardous Material on the Site in violation of this section, Subcontractor shall immediately inform Contractor in writing. In the event Subcontractor or its subcontractors/suppliers encounter on the site any pipeline, underground storage tank or other container, of any kind, that may contain a Hazardous Material, or encounter material reasonably believed to be a Hazardous Material, Subcontractor shall immediately stop work in the area affected and report the condition to the Contractor in writing. If Subcontractor or its subcontractors/suppliers do not comply with the requirements of this section, Contractor may, but is not obligated to, give written notice of violation to Subcontractor.

Should Subcontractor or his subcontractors/suppliers fail to comply with the requirements of this section within twenty-four (24) hours from the time Contractor issues such written notice of noncompliance or within the time of an abatement period specified by any governmental agency, whichever period is shorter, Subcontractor shall be in material default of the Agreement.

(b) Definition of Hazardous Material. "Hazardous Material" means any substance: (1) the presence of which requires investigation or remediation under any present or future federal, state, or local statute, regulation, ordinance, rule, code, order, action, policy or common law, or (2) which is or becomes defined as a "hazardous substance", pollutant or contaminant under any present or future federal, state, or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response and Liability Act (42 U.S.C. Sections 9601 et seq.) and/or the Resource Conversation and Recovery Act (42 U.S.C. Sections 6901 et seq.); or (3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or (4) the presence of which on the property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or (5) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (6) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

40. EQUAL OPPORTUNITY — During the performance of this contract, the Subcontractor agrees as follows:

(a) The Subcontractor will not discriminate against any employee or applicant for employment because of race, creed or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such affirmative action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth this nondiscrimination clause.

(b) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
(c) The Subcontractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided advising the labor union or worker’s representative of the Subcontractor’s commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Subcontractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Subcontractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Subcontractor’s noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, orders, this contract may be cancelled, terminated or suspended in whole or in part and Subcontractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Subcontractor will include the provisions of paragraph (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the secretary of Labor issued pursuant to Section 204 of executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Subcontractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Subcontractor becomes involved in, or is threatened with, litigation with any other subcontractor or vendor as result of such direction by the agency, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

41. NOTICES. All notices or other communications required or permitted hereunder shall be in writing, and shall be delivered or sent, as the case may be by any of the following methods: (i) personal delivery; (ii) regular mail; (iii) overnight commercial carrier or delivery service; (iv) registered or certified mail (with postage prepaid and return receipt requested); or (v) teletype/fax. Any such notice or other communication shall be deemed received and effective upon the earlier of (i) if personally delivered, the date of delivery to the address of the party to receive such notice; (ii) if delivered by overnight commercial carrier or delivery service, one day following the receipt of such communication by such carrier or service from the sender, as shown on the sender’s delivery invoice from such carrier or service, as the case may be; (iii) if mailed with postage prepaid, seventy-two (72) hours after delivery to the U.S. Post Office, or when actually received if sooner; or (iv) if given by teletype/fax, when sent to the correct teletype/fax number of the party to receive such notice.

Any notice or other communication sent by teletype/fax must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. Any reference herein to the date of receipt, delivery, or giving, as the case may be, of any notice or other communication shall refer to the date such communication becomes effective under the terms of this paragraph. The addresses for purposes of the giving of notices hereunder are set forth on the first page of this Agreement for the Contractor and the Subcontractor. Notice of change of address shall be given by written notice in the manner detailed in this paragraph.

42. LICENSE. Subcontractor warrants that he is, and shall herein, licensed by the State in which work under this Agreement is to be performed, under the terms of this Agreement.

43. MISCELLANEOUS.

(a) All rights, options and remedies of Contractor contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Contractor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided at law or in equity, whether or not stated in this Agreement.

(b) No waiver by Contractor of a breach of any of the terms, covenants or conditions of this Agreement by Subcontractor shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default of Subcontractor hereunder shall be implied from any omission by Contractor to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect default other than as specified in said waiver. The consent or approval by Contractor to or of any act by Subcontractor requiring Contractor’s consent or approval shall not be deemed to waive or render unnecessary Contractor’s consent or approval to or of any subsequent similar act by Subcontractor.

(c) Time is of the essence in this Agreement.

(d) In the event of any dispute regarding the interpretation or enforcement of any of the terms and provisions of this Agreement, the prevailing party shall be entitled to actual attorneys’ fees, expenses and costs incurred.

(e) Each and all of the covenants and conditions of this Agreement shall inure to the benefit and shall be binding upon the successors and interest of Contractor and subject to the restrictions upon assignment herein, the successors and assigns of Subcontractor.

(f) Subcontractor represents and warrants that the person or persons executing this Agreement on behalf of Subcontractor has or have full authority to enter into this Agreement and to bind Subcontractor hereto.

INITIALS: Contractor Subcontractor

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(g) All covenants, indemnities, representations and warranties made by Subcontractor pursuant to this Agreement shall survive the termination of this Agreement and Contractor's final payment to Subcontractor.

(h) This Subcontract constitutes the entire agreement between the parties and no statements or representations, verbal or in writing, other than herein set forth shall be a part hereof.

44. **PRIME CONTRACTOR; SUBCONTRACTOR CLAIMS**

Contractor has made a contract for construction with Cilker Apartments (the "Owner") which provides for the furnishing of labor, materials, equipment and services in connection with development of the Job Site (the "Prime Contract"). Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner by all terms and provisions of the Prime Contract and by all of the terms and provisions of the Prime Contract and by all decisions, rulings and interpretations of Owner or its authorized representative. Where a provision of the Prime Contract is inconsistent with a provision of this Agreement, this Agreement shall govern.

In the event Subcontractor claims that it is entitled to damages or to additional compensation, or in the event that Subcontractor disputes any determination made by Owner or Owner's representative, Subcontractor shall, within the time allowed by the Prime Contract, prepare its claims or contentions in writing, as required by the Owner. Subcontractor shall be bound by Owner's ruling or decision on all such matters to the same extent that Contractor is bound. Subcontractor shall have no right to receive payment from Contractor on any claim or contention in any sum greater than that allowed and paid to Contractor by Owner. Subcontractor acknowledges and agrees that payment by Owner to Contractor is an express condition precedent to Contractor's obligation to pay Subcontractor. Contractor shall have no obligation to pay Subcontractor unless and until Contractor has, in fact, received payment from Owner on account of the Work performed by Subcontractor.

45. **EXHIBITS**. The following EXHIBITS are attached and shall be incorporated into this Agreement and made a part hereof.

- X EXHIBIT 'A' - Statement of Work
- X EXHIBIT 'B' - Payment Schedule
- X EXHIBIT 'C' - Insurance Information & Billing Instructions
- X EXHIBIT 'D' - OSHA Addendum
- X EXHIBIT 'E' - "Hazardous Materials Disclosure Statement"
- X EXHIBIT 'F' - Special Conditions for Site Improvement Contracts
- X EXHIBIT 'G' -

**CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT IS FILED WITHIN THREE YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA, 95826**

My signature below acknowledges that I have read and understand the above requirements.

**SUBCONTRACTOR:**

**LOS NIETOS CONSTRUCTION COMPANY**
- Contractor License No. 728871

By ____________________________

By ____________________________

Date ____________________________

**CONTRACTOR:**

**WESTERN NATIONAL CONSTRUCTION**
- Contractor License No. 721478

By ____________________________

By Jim Eger, Director of Construction

Date ____________________________

**INITIALS:** Contractor ____________________________ Subcontractor ____________________________

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A. GENERAL TERMS AND CONDITIONS –

Subcontractor shall furnish and provide all labor, material and equipment necessary to complete installation of the SHEET METAL / GUTTERS & DOWNSPOUTS work on this project, said work including, but not limited to, provisions of the subject specifications as complemented and/or altered by the subject drawings. The following is designed to indicate in a general way the scope of work and is subject to qualifications and additions set out elsewhere in this Subcontract. All work shall be in accordance with building codes, all applicable governing bodies, rules and regulations, and to the complete satisfaction of Contractor.

Subcontractor shall call in all his inspections and obtain approval of same. Subcontractor shall unconditionally guarantee all his work for one year from date of occupancy. This guarantee shall include all materials and labor. In the event Contractor is unable to proceed with project, it is agreed that this contract can be cancelled by Contractor without recourse by Subcontractor.

In the event that Subcontractor is requested to perform services or furnish material over and above his subcontract provisions, and expects to be reimbursed for same, he must first obtain written approval from Contractor's Purchasing Department for this project. Written approval shall be in the form of an WESTERN NATIONAL CONSTRUCTION "Authorization for Extra Work" or "Addendum to Subcontract Agreement" document. This requirement shall be in addition to any and all other instructions, verbal or written, that Subcontractor may receive from Contractor’s field representatives, or any other source.

All additional work performed or material supplied prior to or without the written approval of the Purchasing Department shall be considered done at no charge to Contractor.

Subcontractor shall be responsible for providing a safe work place and for compliance with standards and regulations of the Federal Occupational Safety and Health Act (OSHA), California Division of Industrial Safety (CDIS). Subcontractor is to take special note of the OSHA requirement under code 1592(a) which states: SIGNALMAN MUST BE USED TO DIRECT BACKING OPERATION WHERE THE HIGH AMBIENT NOISE OBSCURES A TRUCK'S BACKUP ALARM.

Subcontractor shall be responsible for erosion protection of his work during construction.

All cut and fill slopes within the development shall be protected. Any damage to these slopes, banks, or swales shall be paid for by the Subcontractor. Subcontractor or his agent shall not drive over, walk over, scar, deface or cause damage to said slopes, banks, or swales in any manner whatsover. If damage should occur it will be the responsibility of the Subcontractor or his agent to repair damaged land and shall be held fully responsible for all costs incurred.

It is understood and agreed that Contractor is relying on the special expertise, skill and knowledge of Subcontractor in the performance of their work hereinafter specified. In addition, such reliance by contractor extends without limitation to Subcontractor’s evaluation and performance of contractual responsibilities, as per the scope of work included herein, and the following:

a. The Contract Documents;

b. The job site, including without limitation the soil and underground conditions and all other conditions which might affect the progress of the work contracted for under the Agreement or described in the Contract Documents;

c. The plans and specifications;

d. Statutes, ordinances and governmental rules, regulations and other requirements applicable to the work contracted for under this subcontract.

e. Rules, regulations, plans, specifications and other requirements of entities whose regulations or specifications are adopted or used by Contractor.

It is hereby acknowledged and agreed that the amount paid to Subcontractor by Contractor under this subcontract is partially in return for Subcontractor's evaluation of the above items. Subcontractor has notified Contractor in writing of the manner, if any, in which the Contract Documents and the plans and specifications provided by Contractor are not sufficient to permit the work contracted for or to be accomplished in an efficient and workmanlike manner in full compliance with governmental agencies having jurisdiction thereof. In the event that such documents, plans and specifications are deficient in any manner other than as so communicated to Contractor, any work required to correct such deficiency shall be performed by Subcontractor at its sole cost and expense according to the terms of this Subcontract, without limitation thereof.

Without limiting the generality of the foregoing, in the event that work performed by Subcontractor is preliminarily or conditionally accepted and such work is subsequently found to be deficient by any governmental agency having jurisdiction thereof, and corrective action is necessary; Subcontractor shall perform corrective measures at its sole cost and expense.

No alcoholic beverages or drugs of any kind are to be consumed by Subcontractor's employees before, during or after working hours while on the job site; no pets or animals of any kind are allowed on the job site; no children, family members or any other unauthorized persons are allowed on the job site. Subcontractor agrees to impose and strictly enforce a regulation to this effect and to inform its employees that such regulation will be strictly enforced. Any employee found to have violated said regulation is to be immediately replaced upon request. Any breach of this provision will be grounds for immediate termination of this Subcontract Agreement by WESTERN NATIONAL CONSTRUCTION.

INITIALS: Contractor __________ Subcontractor __________
WESTERN NATIONAL CONSTRUCTION

EXHIBIT A

STATEMENT OF WORK

Contractor's Architect is McLaran Vasquez & Partners , hereafter called "Architect".

Contractor's Civil Engineer is Sandis Humber Jones , hereafter called "Civil Engineer".

Contractor's Structural Engineer is Group M Engineers , hereafter called "Structural Engineer".

Contractor's Soils Engineer is Terratech, Inc., hereafter called "Soils Engineer".

Contractor's Landscape Architect is Cottong Taniguchi , hereafter called "Landscape Architect".

Per Grading Plans prepared by Sandis Humber Jones, sheets G1-G6 of 6, dated September 1, 1999.

Per Soils Reports by Terratech, Inc., dated April 6, 1999.

Per Architectural Plans prepared by McLaran, Vasquez & Partners, Inc. pages: GEN-1.0 thru GEN-3.0, GEN-S-1 thru SP-2, AA1-1.0 thru AA4-3.2, AB1-1.0 thru AB1-1.1, AB2-1.1 thru AB2-2.5, AB3-1.1 thru AB3-1.4, AB4-1.1 thru AB4-4.4, A5-2.1, A6-1.1 thru A6-4.4, A7-1.1 thru A7-3.3 thru Delta dated 5/24/00.

Per Structural Plans prepared by Group M Engineers pages: SD-1.1 thru SD-2.5, SA-1 thru SA-4, SB-1 thru SB-24, SF-1 thru SF-3, SR-1 thru SR-2, dated 5/19/00.

Per Mechanical Plans prepared by LDI Mechanical, Inc. pages: M-1 thru M-7, EN-1, MR-1 thru MR-2, ENR-1 dated 6/7/00.

Per Electrical Plans prepared by Amelect, Inc. pages: E1.0 thru E2.0, EA3.1 thru EA4.2, EB2.0 thru EB4.3 (not dated).

Per Plumbing Plans prepared by Parks Mechanical Construction Corp. pages: P0.0 thru P7.0, P7.0-A, P7.1 thru P7.2 dated 6/7/00.

The subcontractor will also comply with the latest requirements of local, City, County, State, Federal and all other agencies having jurisdiction over the work performed at the project specified in this contract.

SCOPE OF WORK

Subcontractor agrees to provide all necessary labor, materials, equipment, tools, supplies, and miscellaneous incidentals as required for the prompt and efficient execution of the work described herein, in accordance with the architectural drawings and details for this project with all subsequent revisions through the date of this contract.

Subcontractor acknowledges that it has personally inspected the site and is fully aware of all conditions as they relate to this project and its work.

Subcontractor shall furnish all labor and material necessary to achieve a waterproof, termite proof and properly ventilated building. This work specifically includes, but is not limited to, the following items. Any item not listed but necessary to complete the Sheet Metal installation is deemed to be included in this agreement.

Contract prices are based on architectural plans including Delta 4, dated 5/24/00, by McLaran, Vasquez & Partners, and includes mechanical, structural, plumbing and electrical.

1. All sheet metal to be proper gauge in accordance with architect’s specifications, all governing codes, and all manufacturer’s recommendations.

2. All galvanized sheet metal flashings, top single flashing, counter flashings, ridge well flashings, roof to wall flashings, stucco stop over roof to wall flashings, door pans, change of pitch flashings, water table, and water table flashing, patio flashing, brick flashings, 2-bar flashings, cornice flashing, cap/post flashings, and cap flashing for balcony rail and pilasters, G.I. flashings and stucco reglet, G.I. cant and cricket saddles, pocket saddles, roof scuppers.

3. Fabricate & install all 2-bar and 2-bar pan flashings.

4. Provide & install tile pan flashing, valley metal, metal cricket, roof edge metal and counter flashing at all tile roofs.

5. Provide & install Z-bar at hot mop roofs, coping metal & cap at roof parapets, and composition base flashing at sloping to flat roof transition.

6. Provide & install appropriately sized roof diverters, corner pan diverters, scuppies with shrouds per plans and specifications.

7. Provide & install gable louver vents at mansard where applicable.

INITIALS: Contractor ________ Subcontractor ________

Cost Code: 05-570-3125/3127
WESTERN NATIONAL CONSTRUCTION
EXHIBIT A
STATEMENT OF WORK

8. Utilize half round dormers at barrel tile roofing, use rectangular dormers at flat tile roofing.
9. Eave edge metal flashing as per plan details.
10. Provide and install all "L" metal flashings, and "L" metal flashings with drip edge per details.
11. Deck edge with gutter, balcony scuppers, and all deck flashings required at all balconies.
12. Provide and Install stucco and concrete stops at porches and catwalks if applicable.
13. Provide & install counterflashings at stair platforms.
14. Subcontractor shall furnish and install all reglets. Stucco weep screed furnished by others.
15. Provide and install all soffit and eave vents.
16. Provide and install all expansion joint covers at 2 hour shafts where applicable.
17. Combustion air vents for water heaters and gas meter rooms.
18. Provide & install all vents, ducting, and termination for base and attic vents, laundry room fan vents, and kitchen exhaust vents. (Bath & dryer vents furnished by HVAC subcontractor).
   A. Subcontractor shall install range vent to hood using sheet metal screws. Range vent shall also be taped and sealed.
19. Provide and install attic louver vents as required.
20. All louvers to include head drips.
21. Provide "eyebrow" at all duct terminations on vertical surfaces. Vents terminating at roof to receive vent roof flashings.
22. Provide and install all door pan flashings, including deck doors, per plan
23. Provide and install threshold counterflashings on slabs.
24. Subcontractor to include all sheet metal as necessary for Lease/Recreation Building per plans and specifications.
25. All exposed sheet metal shall be bonderized ready to receive paint.
26. Subcontractor to adhere to local Security Code Instructions as applicable.
27. Subcontractor agrees that the amount of this contract represents 100% complete job and includes completion of all pick ups within (2) days of notification.

GUTTERS & DOWNSPOUTS

1. Provide and install all 5" Ogee aluminum raingutter and 3" round downspout per plans and elevations for Building "A", "B" and Lease/Recreation Building.
2. Provide and install all leader boxes, scuppers, and boots as required for connection by others to area drain system.

My signature below acknowledges that I have read and understand the above requirements.

SUBCONTRACTOR:

LOS NIEVES CONSTRUCTION COMPANY

By: ____________________________
By: ____________________________
Date: __________________________

CONTRACTOR:

WESTERN NATIONAL CONSTRUCTION

By: ____________________________
By: Jim Eger, Director of Construction
Date: __________________________

INITIALS: Contractor ____________ Subcontractor ____________

Cost Code: 05-570-3125/3127

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# STATEMENT OF WORK

## A. SHEET METAL (3125)

<table>
<thead>
<tr>
<th>Description</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Extension</th>
</tr>
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<tbody>
<tr>
<td>Building A</td>
<td>1</td>
<td>$48,482.00</td>
<td>$48,482.00</td>
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<tr>
<td>Building B</td>
<td>1</td>
<td>$153,354.50</td>
<td>$153,354.50</td>
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<tr>
<td>Recreation Building</td>
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<td>$3,221.00</td>
<td>$3,221.00</td>
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**SUB-TOTAL** $205,057.50

## B. GUTTERS & DOWNSPOUTS (3127)

<table>
<thead>
<tr>
<th>Description</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Extension</th>
</tr>
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<tbody>
<tr>
<td>Building A</td>
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<td>$9,940.00</td>
<td>$9,940.00</td>
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<tr>
<td>Building B</td>
<td>1</td>
<td>$36,640.00</td>
<td>$36,640.00</td>
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<tr>
<td>Recreation Building</td>
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<td>$1,575.00</td>
<td>$1,575.00</td>
</tr>
</tbody>
</table>

**SUB-TOTAL** $48,155.00

**TOTAL CONTRACT AMOUNT** $253,212.50

My signature below acknowledges that I have read and understand the above requirements.

SUBCONTRACTOR:

LOS NIETOS CONSTRUCTION COMPANY

By: __________________________

By: __________________________

Date: __________________________

CONTRACTOR:

WESTERN NATIONAL CONSTRUCTION

By: __________________________

By: Jim Evangelista, Director of Construction

Date: __________________________

INITIALS: Contractor __________ Subcontractor __________

Cost Code: 05-570-3125/3127

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# Exhibit B

## Payment Schedule

### Trade:
Sheet Metal / Gutters & Downspouts

### Cost Code:
3125/3127

### Project:
One Pearl Place

### Tract:
Ohlone-Chenoweth

### Building A

<table>
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<th>BLDG #</th>
<th>BLDG PRICE</th>
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### Building B

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<td>153,354.50</td>
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### Recreation

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<td>3,221.00</td>
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**Sub-Total 3125**

|          |               | 205,057.50 | 153,793.13 | 30,758.63  | 20,505.75  |

### Draw Schedule per Building:

1. 75% Upon Installation of rough sheet metal.
2. 15% Upon Installation of finish sheet metal.
3. 10% RET. due 35 days after completion and acceptance of work.

### Building B

<table>
<thead>
<tr>
<th>BLDG #</th>
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<tr>
<td></td>
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<td>9,940.00</td>
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### Building B

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### Recreation

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<th>10% Draw 2</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>1,575.00</td>
<td>1,417.50</td>
</tr>
</tbody>
</table>

**Sub-Total 3127**

|          |               | 48,155.00  | 43,339.50  | 4,815.50   |

### Draw Schedule per Building:

1. 90% Upon completion and acceptance of work
2. 10% RET. due 35 days after completion and acceptance of work.

**Grand Total:**

|          |               | 253,212.50 | 197,132.63 | 35,574.13  | 20,505.75  |

---

**Contract Total:**

253,212.50

---

**Subcontractor:**

Los Nietos Construction Company

By: [Signature]

By: [Signature]

Date: [Date]

---

**Contractor:**

Western National Construction

By: [Signature]

By: [Signature] Jim Farmer, Director of Construction

Date: [Date]
WESTERN NATIONAL CONSTRUCTION
EXHIBIT C
INSURANCE INFORMATION BILLING INSTRUCTIONS

I. EVIDENCE OF INSURANCE

Prior to the commencement of any contract work, Subcontractor shall provide Contractor with certificates of insurance evidencing the following insurance coverages, as well as endorsements (a) evidencing the waiver of subrogation with respect to the additional insureds specified in Section 3 below, (b) naming the parties specified in Section 3 below as additional insureds, and (c) providing that any insurance or self-insurance maintained by the additional insureds specified in Section 3 below is excess and non-contributing. The required coverages are:

1. CERTIFICATE HOLDER: WESTERN NATIONAL CONSTRUCTION,
   CILKER ORCHARDS AND CILKER APARTMENTS LLC
   P.O. Box 19528
   Irvine, CA 92623-9528

2. COVERAGE:

   A. GENERAL LIABILITY $1,000,000 Per Occurrence CSL
      (limit of S.I.R. or GL deductible specified on Certificate)
      - Commercial General Liability
      - Bodily Injury & Property Damage on Occurrence Basis - NOT "Claims Made"
      - Owner's Contractors Protective Liability
      - Contractual Liability
      - Broad Form Property Damage
      - Products Completed Operations
      - Personal & Advertising Injury Liability
      - Premises & Operations Coverage
      - Underground, Explosion & Collapse Hazard
      - No General Liability deductible permitted
      - Additional Insured And Primary Wording Endorsements

   B. AUTOMOBILE LIABILITY $1,000,000 Limit
      - All Owned Autos or Scheduled Autos and
        Hired Autos and
        Non-owned Auto
      - Additional insured

   C. WORKERS COMPENSATION $1,000,000 Limit
      - Workers Compensation - Statutory Coverage
      - Employer's Liability - $1,000,000.00 Minimum
      - ENDORSEMENT EVIDENCING WAIVER OF SUBROGATION

3. ADDITIONAL INSURED/PRIMARY COVERAGE:

   "It is understood and agreed that coverage afforded by this policy shall also apply to Cilker Orchards, Cilker Apartments LLC and their respective officers, directors, agents, servants, employees, divisions, subsidiaries, partners, shareholders and affiliated companies and Western National Construction as additional insureds, but only with respect to legal liability or claims caused by, arising out of or resulting from the acts or omissions of the named insured or of others performed on behalf of the named insured and the acts or omissions of the additional insured(s) in connection with any general supervision by the additional insured(s) of the Subcontractors work."

INITIALS: Contractor \[Signature\] Subcontractor \[Signature\]

Cost Code: 05-570-3125/3127

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CONTRACT NO. 05-570-3125/3127

WESTERN NATIONAL CONSTRUCTION

EXHIBIT C
INSURANCE INFORMATION & BILLING INSTRUCTIONS

This insurance is primary and any other insurance or self-insurance maintained by the additional insureds is excess and non-contributing with this insurance as respects claims or liability arising out of or resulting from the acts or omissions of the named insured, or of others performed on behalf of the named insured.

4. PROFESSIONAL ERRORS & OMISSIONS LIABILITY:
   Only required for the Subcontractor providing architectural design or engineering services.
   $1,000,000 Limit
   Deductible and/or SIR Not To Exceed $25,000

5. CANCELLATION:
   A. 30 DAYS CATEGORICALLY
      - If using the ACCORD form. X-out words "ENDEAVOR TO" and the words "BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION...."

6. DESCRIPTION OF OPERATIONS: "All Operations"

7. OTHER
   All insurance carriers issuing any insurance required hereby shall have the most recent Best's key rating of A with a size rating of A- or better.
   NOTE: Contractor may withhold payment to Subcontractor for noncompliance to insurance requirements or expiration/cancellation of insurance.

II. LOWER-TIERED SUBCONTRACTORS AND MATERIAL SUPPLIERS
   Prior to the commencement of any work, Subcontractor shall submit a list of all lower tiered subcontractors and suppliers along with their designated performance times.

III. CALIFORNIA PRELIMINARY NOTICE INFORMATION
   The Subcontractor shall be required to provide this information to each lower tiered subcontractor, material supplier, etc., with whom he enters a contract on the Project.

   PROJECT NAME & LOCATION: ONE PEARL PLACE
   PARCEL 2
   SAN JOSE, CA

   GENERAL CONTRACTOR: WESTERN NATIONAL CONSTRUCTION
   8 EXECUTIVE CIRCLE
   IRVINE, CA 92614

   OWNER/DEVELOPER: CILKER APARTMENTS LLC
   1631 WILLOW STREET, SUITE 225
   SAN JOSE, CA 95125

   CONSTRUCTION LENDER: NA

My signature below acknowledges that I have read and understand the above requirements.

SUBCONTRACTOR: LOS ANGELES CONSTRUCTION COMPANY

By: [Signature]

By: [Signature]

Date: [Date]

CONTRACTOR: WESTERN NATIONAL CONSTRUCTION

By: [Signature]

By: [Signature], Director of Construction

Date: [Date]

INITIALS: Contractor ___________ Subcontractor ___________

Cost Code: 05-570-3125/3127
IV. BILLING INSTRUCTIONS

- Subcontractor must use the Lien Release Package supplied by WESTERN NATIONAL CONSTRUCTION as part of this Subcontract Agreement.

- Before submitting payment requests to this office, you must check with our field superintendent as to the number of buildings or dwelling units accomplished up to the date of your payment request. The quantities that you should request must tally with the quantities logged in the field.

- Each payment request should be in strict conformance with the above and should show the number of buildings or dwelling units, the particular activity for which you are billing, the unit price as agreed, and the retention as established herein.

- RETENTION: 10% Payable thirty-five (35) days after completion and acceptance of Subcontractor’s work.

- Payment requests should have attached to it a labor and material lien release on Western National Construction forms. The date of these releases must, of course, have the same date as the Payment Request Form.

- Invoices submitted to Western National Construction on the 20th of the month will be paid on the 20th of the following month. Paid as defined herein, means deposited in the U.S. Mail.

- INVOICES NOT PROPERLY SUBMITTED BY THE DATES INDICATED SHALL BE DEEMED AS LATE AND CARRIED OVER TO THE FOLLOWING MONTH.

- Contractor may at his discretion make any payment due Subcontractor by check payable jointly to Subcontractor and to any materialmen, subcontractor, laborers or suppliers concerned in said work.

My signature below acknowledges that I have read and understand the above requirements.

SUBCONTRACTOR:
LOS HISTOS CONSTRUCTION COMPANY

By: [Signature]
By: [Signature]
Date: [Date]

CONTRACTOR:
WESTERN NATIONAL CONSTRUCTION

By: [Signature]
By: Jim Egner, Director of Construction
Date: [Date]
To WESTERN NATIONAL CONSTRUCTION

This Addendum to Contract No. 05-570-3125/3127 confirm that LOS NIETOS CONSTRUCTION COMPANY is fully cognizant of CAL/OSHA's SB 198 Injury and Illness Prevention Program requirements, California Division of Industrial Orders (CDIS), and the Standards and Regulations of California Occupational Safety and Health Act (Title 8, Industrial Relations) and hereby acknowledges compliance with the same. Particular reference shall be made to the trades dealing with "Excavation, Trenches and Earthwork" - Article 6 of the CAL/OSHA Construction Safety Orders and Sections 1539, 1540, 1541, 1542, 1546 and 1547 thereof.

Subcontractor herein agrees to abide by all OSHA safety requirements and specifically the new OSHA fall protection standards effective February 1, 1995.

We agree to abide by the above named rules and will take all steps to insure that all employees on the jobsite covered by Contract No. 05-570-3125/3127 will be fully knowledgeable of the rules as well. To this end, a copy of said rules will be kept on the jobsite.

Acknowledgement:
Subcontractor's Name: LOS NIETOS CONSTRUCTION
Trade: S h e t M a t

My signature below acknowledges that I have read and understand the above requirements.

SUBCONTRACTOR:
LOS NIETOS CONSTRUCTION COMPANY

By: ____________________________
Date: ____________________________

CONTRACTOR:
WESTERN NATIONAL CONSTRUCTION

By: ____________________________
By: Jim Euler, Director of Construction
Date: ____________________________

INITIALS: Contractor Subcontractor

Cost Code: 05-570-3125/3127
TO: LOS NIETOS CONSTRUCTION COMPANY

DATE: NOVEMBER 10, 2000

SUBJECT: "HAZARDOUS MATERIALS DISCLOSURE STATEMENT"

Please be informed that you are obligated by "Proposition 65", the OSHA Hazard Communications Standards, and all other local governing agencies to disclose to the General Contractor any hazardous materials being used or stored on any of our projects along with all applicable "Material Safety Data Sheets".

To comply with the "Hazardous Materials Compliance Program" being implemented by WESTERN NATIONAL CONSTRUCTION, hazardous materials information will be on file in each construction site office for your employees' review.

If you are working on more than one project, each project shall be disclosed separately.

If you have no hazardous materials involved in your trade, please sign the acknowledgement below and indicate "not applicable" and return to WESTERN NATIONAL CONSTRUCTION office at your earliest convenience.

If you will be disclosing information, please sign the acknowledgement below and return along with the necessary forms as soon as possible.

Compliance with this procedure will be monitored in the same way our insurance compliance, therefore, failure to comply can hold up your invoices and payments.

If you have questions, please contact our office.

Acknowledgement:

Subcontractor's Name _____________________________

Trade _____________________________

Applicable _____________________________

Not Applicable [ ]

My signature below acknowledges that I have read and understand the above requirements.

SUBCONTRACTOR: LOS NIETOS CONSTRUCTION COMPANY

By: _____________________________ Date: _____________________________

CONTRACTOR: WESTERN NATIONAL CONSTRUCTION

By: _____________________________ Date: _____________________________

INITIALS: Contractor _____________________________ Subcontractor _____________________________
CONTRACT NO. 05-570-3125/3127

WESTERN NATIONAL CONSTRUCTION

EXHIBIT F

SPECIAL CONDITIONS FOR SITE IMPROVEMENT CONTRACTS

1. WORK IS COMPREHENSIVE
   Work includes all effort necessary for completion. Work such as boring, casing, dewatering, rock and other bedding, removals and patching restorations are included in the contract price. Excess dirt will be placed and leveled as directed by the Contractor.

2. TESTING
   The cost of initial testing shall be paid for by Contractor and the cost of retesting, as a result of failures, shall be paid for by Subcontractor.

3. EQUIPMENT RATES FOR CERTAIN PURPOSES
   Subcontractor shall attach hereto a schedule of Subcontractor's standard rates for equipment. Contractor specifically reserves the right to approve the rental rates submitted by the Subcontractor.

4. USE OF COMPLETED PORTIONS
   Contractor shall have the right, upon written notice to the Subcontractor and his Surety, if any, to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of any work.

5. REMOVING OBSTRUCTIONS
   When the proper completion of the work requires their temporary or permanent removal, the Subcontractor shall at his own expense remove and without unreasonable delay, temporarily or permanently replace or relocate in a workmanlike manner and to the satisfaction of the Contractor, all water pipe or appurtenances thereto, pipe lines, retaining walls, curbs, gutters, cement walks, and all other improvements of whatever character. Such improvements temporarily removed shall be maintained until permanently replaced, all at the Subcontractor's expense.

6. PUBLIC UTILITIES
   In case it shall be necessary to move property owned by a public utility, franchise or easement holder, the cost of which, because of the terms of any franchise or for any other reason, must be borne by the owner thereof, such owner will, upon proper application by the Subcontractor, be notified by the Contractor to move such property within a specified reasonable time, and the Subcontractor shall not interfere with said property until after the expiration of the time specified. If the cost is not borne by the owner of the public utility, franchise or easement, the Subcontractor shall perform the work, unless otherwise specified within the Plans, Specifications, or elsewhere in the contract.

   The right is reserved to governmental entities and to any and all persons and owners of public utilities, franchises and easements to enter at any time upon any street, alley, right-of-way or easement for the purpose of making changes in their property made necessary by the work under this Contract and for the purpose of maintaining and making repairs to their property, and for any purpose of any work which they are otherwise privileged or entitled to undertake or do.

7. MAINTENANCE OF EXISTING IMPROVEMENTS
   Unless otherwise indicated on the Plans or in the Specifications, or otherwise called for by the owner thereof, all water, gas or irrigation lines, lighting, power or telephone conduits or wires, or sewer lines, structures or house water, gas or irrigation lines, lighting, power or telephone conduits or wires, or sewer lines, structures or house connections in place, and other surface or subsurface structures or lines whether or not known to Subcontractor at the time of the execution of the Contract, shall be maintained by the Subcontractor and shall not be disturbed, disconnected or damaged by him during progress of the work. The location of existing underground facilities, whether shown on the Plans or not, shall be the responsibility of the Subcontractor. Should the Subcontractor in the performance of the work disturb, disconnect or damage any of the above, all expenses of whatever nature arising from such disturbance, disconnection or damage shall be borne by the Subcontractor.

8. PRESERVATION OF MONUMENTS
   The Subcontractor shall not disturb any monuments or stakes found on the site of the work without written permission from the Contractor, and he shall bear the expense of properly resetting any monuments or stakes which he may disturb.

My signature below acknowledges that I have read and understand the above requirements.

SUBCONTRACTOR:

LOS NIETOS CONSTRUCTION COMPANY

By: [Signature]

By: [Signature]

Date: [Date]

CONTRACTOR:

WESTERN NATIONAL CONSTRUCTION

By: [Signature]

By: Jim Egne, Director of Construction

Date: [Date]

INITIALS: Contractor [Signature] Subcontractor [Signature]

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9. TEMPORARY WORK
The Subcontractor shall perform all work of a temporary nature for the completion of the Contract. The cost of such work is included in the Contract price. Such work includes but is not limited to:

- WATER, LIGHT and POWER—The Subcontractor shall provide all temporary water, light and power necessary for the performance of the work under this Contract and shall pay for all such charges until the work is accepted by the Contractor.

- PUBLIC SAFETY—The Subcontractor shall conform in all respects to the requirements of all Federal, State, and local laws, rules and regulations governing public safety, including barricades, lights and fences.

- PUBLIC CONVENIENCE and ACCESS—The Subcontractor shall conduct his operations so as to cause the minimum obstruction and inconvenience to traffic and to facilities adjacent to the work. Temporary access roads required to maintain traffic flow or access shall be installed and maintained by the Subcontractor, along with employment of traffic control personnel. During all phases of the work, the Subcontractor shall take precautions to abate dust and noise nuisances by means satisfactory to the Contractor, his Engineer, and local governmental agencies.

10. SUBSURFACE AND LATENT CONDITIONS
Variations in subsurface and/or latent conditions not materially different from those shown or indicated in the Plans and Specifications, or not differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Plans and Specifications, shall not give rise to additional payments to Subcontractor. However, should the Subcontractor encounter or discover during the progress of the work subsurface and/or latent conditions, at the Site, materially differing from those shown on the Plans or indicated in the Specifications or unknown conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Plans and Specifications, the attention of the Contractor shall be immediately called to such conditions, in writing, before they are disturbed. The Contractor shall thereupon investigate the conditions, and if they do so materially differ, the additional work shall, with the written approval of the Contractor, be qualified as "extra work" and shall be resolved in accordance with the General Terms and Conditions of this Contract.

Rock excavation not apparent from the surface, or reflected in the Plans or Specifications or not specifically included contract documents and the Subcontractor's bid shall be considered as extra work. Rock excavation shall consist of furnishing all necessary equipment, material, and labor to remove all geological formations that require use of special equipment or blasting, to the line and grade as shown on the Plans or as directed by the Engineer. These geological formations are defined as those having a seismic velocity in excess of 6500 feet per second and that require removal by special equipment and/or blasting. Determination of seismic velocities will be accomplished by the Geologist or his qualified representative.

During the grading operation, the judgment of the Engineer or Geologist shall determine what constitutes rock excavation. In the event of a conflict of judgment between the Subcontractor and Engineer or Geologist, the Subcontractor may order a seismic test. Seismic tests which are ordered by the Subcontractor and fail to show velocities in excess of 6500 feet per second, shall be paid for by the Subcontractor. The costs of delays shall also be paid for by the Subcontractor.

The Subcontractor shall be responsible for obtaining necessary permits for blasting, and shall be responsible for the safety of all persons and properties during any blasting operation and, shall have in force acceptable liability insurance. All operations shall be conducted in strict accordance with State, Federal and WNH safety rules and regulations.

Excessive blasting will not be permitted. Any material outside of the authorized area which may be shattered or loosened because of blasting shall be removed and, when necessary, replaced at the Subcontractor's expense.

Blasted material shall be placed in any embankment area in accordance with Section 19, Standard Specifications (January, 1975) of the State of California Business and Transportation Agency, Department of Transportation. Where the Engineer requires rock excavation below the finished surface, the area will be filled to finish grade.

Upon the encountering of rock coming within the provisions of these paragraphs, a payment schedule will be negotiated in accordance with Contract provisions. There shall be taken into consideration in connection therewith any quantity of earth which the Subcontractor was received of removing by reason of required rock excavation. The quantity of the rock excavation shall be measured and certified in the field by the Engineer.

My signature below acknowledges that I have read and understand the above requirements.

SUBCONTRACTOR:
LOS ANGELES CONSTRUCTION COMPANY

By: __________________________________________
By: __________________________________________
Date: _________________________________________

CONTRACTOR:
WESTERN NATIONAL CONSTRUCTION

By: __________________________________________
By: Jim Qnqr44je4gKof.tonstruction
Date: _________________________________________

INITIALS: Contractor Subcontractor_____________

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