

MASTER SUBCONTRACT AGREEMENT

This Master Subcontract Agreement (the “Master Agreement”) is entered into this day of _____, 20____, by and between Wilmot Modular Structures, Inc., (“Wilmot” or “Contractor”) located at 5812 Allender Road, White Marsh, Maryland and _____, (“Subcontractor”) located at _____

MASTER AGREEMENT. Contractor shall from time to time enter into contracts with various owners on different projects. Contractor and Subcontractor may enter into one or more Purchase Orders for separate items of work (the Work) on a specific project. This Master Subcontract Agreement constitutes the terms and conditions for any and all subsequent Purchase Orders. Contractor and Subcontractor agree that this nothing herein shall obligate Contractor to award any amount of Purchase Orders to Subcontractor. Parties further agree that Subcontractor is under no obligation to accept every Purchase Order received by the Contractor.

1. **CONTRACT DOCUMENTS.** The Contract Documents consist of this Master Subcontract Agreement and any Exhibits attached hereto; the Drawings; the Specifications, including Addenda; all subsequent and accepted Work Orders and exhibits, attachments, or other associated documents; and any subsequent change orders signed by both parties.

2. **SCOPE OF WORK.** The Subcontractor shall furnish all supervision, labor, materials, tools, equipment, supplies and services and all other things necessary whether herein specified or not, for the complete and entire performance of Subcontractor’s Work in subsequent Purchase Orders in strict accordance with the Contract Documents subject to the final approval of Contractor. Subcontractor’s Work shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike and substantial manner. Execution of this Subcontract by Subcontractor is representation by the Subcontractor that it is experienced in the field of construction and is qualified, consistent with industry standards, to perform Subcontractor’s Work in conformance with the Contract Documents. The Subcontractor represents that it is properly licensed by all necessary authorities having jurisdiction over the Subcontractor’s Work.

3. **CONTRACT SUM.** Contractor shall pay Subcontractor for the performance of the Subcontractor’s Work per Scope of Work noted in Purchase Order, subject to additions and deductions by Change Order, or other Subcontract provisions, the total sum indicated on Purchase Order. The Master Subcontract Agreement shall be deemed to be part of and incorporate into the Work Order whether or not the Master Subcontract Agreement is physically attached to the Work Order.

4. **TIME.** Subcontractor understands and acknowledges that time is of the essence to every subsequent Purchase Order and the Project. Subcontractor agrees to start the Work at the site per Wilmot’s schedule, to supply workmen and equipment to maintain the progress of its Work to Contractor’s satisfaction, to perform its Work at such times and places as designated by Contractor, and not to delay, damage or otherwise interfere with Contractor’s work or the work of any other contractor or subcontractor on Work Order or the Project.

5. **PAYMENT.** Upon completion of Subcontractor’s scope of work, either in total or in part, Subcontractor shall submit its invoice for work completed within 14 working days of completion of work. Contractor shall pay Subcontractor, within 30 days of acceptance of work performed in accordance with Purchase Orders and any affiliated Change Orders. No payment shall be made to

Subcontractor for any improper or rejected Work unless it has been remedied by the Subcontractor and accepted by the Owner, and no payment shall be considered as an acceptance of any defective Work. Contractor may retain up to 10% of any progress payment which will be paid to Subcontractor when the Subcontractor's Work is completed in accordance with the Contract Documents and to the satisfaction of Contractor and Owner and payment of retainage has been received by Contractor from Owner. **If project requires certified payroll, final payment will not be released until all certified payroll submissions have been made.**

6. **PAYMENT LOWER TIER SUBCONTRACTORS AND SUPPLIERS.** Subcontractor shall pay all lower tier subcontractors and suppliers for all labor, materials, equipment or other services provided to the Project. The Subcontractor agrees to defend, indemnify, protect and hold harmless Contractor and the Owner from and against any and all claims, actions, fines and penalties brought or imposed, or judgments rendered thereon, or any loss, damages, liability, costs and expenses including legal fees and disbursements which Contractor and/or the Owner may sustain or incur as a consequence of Subcontractor's failure to comply with the terms of this paragraph. The failure of Subcontractor after five (5) working days written demand by Contractor or Owner to satisfy discharge and/or bond a mechanic's lien or claim filed by a subcontractor, supplier, equipment lessor or any other party arising out of the Subcontractor's Work, or any other failure by Subcontractor, shall constitute a material breach of this Subcontractor and, at the sole discretion of the Contractor, may constitute grounds for termination of the Purchase Order and/or the Master Subcontract Agreement.

7. **WITHHOLDING PAYMENT.** Contractor shall have the right to withhold payment to Subcontractor for claims of unpaid lower tier subcontractors or suppliers, for disputed claims for defective work not remedied and/or because of any delay on the part of the Subcontractor, and for any breach of this Master Subcontract Agreement by Subcontractor.

8. **FINAL PAYMENT.** Final payment shall be made within 30 days of Acceptance of work performed by Subcontractor and shall constitute a full and complete discharge and release of the Contractor, Owner and Project by Subcontractor.

9. **ASSIGNMENT.** Subcontractor shall not assign this Master Subcontract Agreement without the written consent of the Contractor, nor subcontract any part of this Master Subcontract Agreement or Work Order without the written consent of Contractor.

10. **SAFETY.** The Subcontractor shall take all necessary and prudent safety precautions while performing the Work and shall comply with all safety policies, programs and measures initiated by the Contractor and the Owner and with all applicable laws, ordinances, rules, regulations and orders of any public authority for safety of persons or property. Subcontractor agrees to defend, indemnify and hold Contractor and Owner harmless from all claims, demands, proceedings, violations, penalties, assessments or fines that arise out of or relate to the Subcontractor's failure to comply with any safety related laws, ordinances, rules, regulations, orders or its obligations hereunder.

11. **TERMINATION FOR CAUSE/DEFAULT.** Should the Subcontractor at any time fail to make prompt payment for labor, equipment, or materials, including any taxes or employee benefit funds thereon; refuse or neglect to supply a sufficient quantity of materials of proper quality; perform Work which does not conform to the Contract Documents; fail in any respect to prosecute the Work covered by this Work Order with promptness and diligence; become insolvent; make an assignment for the benefit of creditors; have a receiver appointed; commence any proceeding in bankruptcy; become involved in labor difficulties; or otherwise breach the terms of the Master Subcontract Agreement; the Contractor may, without prejudice to or

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limitation of Contractor's other rights or remedies for loss or damage sustained, upon forty-eight hours written notice to the Subcontractor, (1) provide any such labor and materials that are necessary, in Contractor's sole discretion, and deduct the cost thereof from any payments then due or to become due to the Subcontractor; or (2) terminate the Work Order and immediately take possession of all tools, equipment, scaffolding, apparatus, ways, works, machinery, plans, rigging, containment and other property of Subcontractor without cost or liability for the purpose of completing the Work under the Work Order.

12. **CANCELLATION.** Contractor shall have the right to cancel this Master Subcontract Agreement in whole or in part at any time, for any reason or for no reason, or for cause or without cause, by providing Subcontractor with a written Notice of Cancellation to be effective upon receipt by Subcontractor. In the event that Contractor issues a Notice of Cancellation, Subcontractor shall be paid for the value of the labor and materials provided in place prior to the Notice of Cancellation.

13. **SUPPLEMENTATION.** If Subcontractor, in Contractor's sole opinion, is not fulfilling its obligations hereunder, the Contractor may supplement the Subcontractor's forces with additional labor, materials and equipment. The cost associated with supplementing the Subcontractor's Work shall be deducted from any Work Order amount.

14. **CHANGE ORDERS.** Contractor may, without invalidating this Master Subcontract Agreement, make changes in the Subcontractor's Work consisting of additions, deletions, or other revisions. The Subcontract amount and schedule shall be adjusted by Change Order. The Subcontractor, prior to the commencement of such changed or revised work, and within three (3) days of receiving notice of the change from Contractor, shall submit to Contractor written copy of any claim for reasonable adjustment to the Work Order amount and/or schedule. In the event that Contractor disputes the amount requested by the Subcontractor, the Subcontractor will promptly perform the changed or revised work, so as not to delay the Project or Work Order.

15. **SUBCONTRACTOR REMEDY FOR DELAY.** Subcontractor agrees that its sole remedy for delay shall be an extension of time to perform this Work Order. Under no circumstances shall Subcontractor be entitled to recover consequential damages.

16. **WARRANTY.** Subcontractor warrants that all Work under this Master Subcontract Agreement shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. Subcontractor shall, at its own expense, promptly remove and re-execute any deficient Work or Work that fails to conform to the Contract Documents. Subcontractor shall warrant its workmanship for a period of one year from the date of completion and final acceptance of the Project or Work Order.

17. **INDEMNIFICATION.** To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify and hold harmless Contractor and the Owner, and their respective agents and employees from and against any and all claims, damages, loss, liabilities and expenses, including, but not limited to, attorneys' fees arising out of or related to the performance of the Subcontractor's Work. The indemnity obligations herein shall survive both Contractor's and the Subcontractor's completion of their respective work on the Project or Work Order, as well as the termination of this Master Subcontract Agreement.

18. **MEDIATION.** Any claim arising out of or related to the Master Subcontract Agreement shall be subject to mediation as a condition precedent to arbitration. Unless the parties mutually agree otherwise, mediation shall be in accordance with the Construction Industry Mediation Rules

of the American Arbitration Association currently in effect. The mediation shall be held in Baltimore County, Maryland, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

19. **ARBITRATION.** Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Master Subcontract Agreement and with the American Arbitration Association.

20. **STATUTE OF LIMITATIONS.** A demand for arbitration shall be made within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

21. **CHOICE OF LAW AND VENUE.** The law governing the interpretation of any terms of the Subcontract or any dispute between Contractor and Subcontractor shall be the law of Maryland without application of principle of choice or conflict of laws. All proceedings shall take place in Baltimore County, Maryland and Subcontractor expressly consents to personal jurisdiction in that venue.

22. **INSURANCE.** The Subcontractor shall purchase and maintain at all times throughout the term of any subsequent Work Order without interruption and, at the least, from the date of commencement of the Work until the date of final payment or the date through which insurance coverage is required to be maintained after final payment to the Subcontractor under the Work Order, whichever is later. The insurance coverages require Wilmot Modular Structures, Inc. will be added as additional insured on insurance policies. The Subcontractor shall provide the Contractor with the complete policies for such insurance coverages upon request of the Contractor. The Subcontractor shall furnish insurance as fully described in **Exhibit B** hereto and shown in sample Certificates of Insurance. Insurance must be in strict accordance with the Contract Documents subject to the final approval of Contractor.

23. **WAIVERS.** The failure of Contractor to enforce at any time or for any period of time any one or more of the provisions of this Master Subcontract Agreement or the Contract Documents shall not be construed to be and shall not be a waiver of any such provision or provisions and the Contractor shall thereafter be entitled to enforce such provision without any requirement that the Contractor provide notification to the Subcontractor of its intention to thereafter enforce said provision or provisions.

24. **SEVERABILITY.** The partial or complete invalidity of any one or more provision of this Agreement shall not affect the validity or continuing force and effect of any other provision.

25. **ENTIRE AGREEMENT.** This Agreement, including the documents incorporated by reference herein, represents the entire and integrated agreement between the parties hereto and unless specially reference herein, supersedes all prior negotiations, representations, or agreement either written or oral. The parties to this Subcontract do not intend to create any third-party beneficiaries of the promises of this Subcontract. This Agreement may not be modified except by a writing signed by both parties.

conditions hereof, have affixed their signatures to this Subcontract Agreement on the date first above written.

CONTRACTOR
WILMOT MODULAR STRUCTURES, INC.

By: _____

Attest

SUBCONTRACTOR:

By: _____

Attest