

## CONSTRUCTION CONTRACT

This Construction Contract (this "**Agreement**") is made on the 7<sup>th</sup> day of April, 2023, by and between SUNBROOK DEVELOPMENT, LLC("Owner") and SITECRETE, LLC ("Contractor").

Owner and Contractor, in consideration of the mutual covenants contained in this Agreement, agree as follows:

### ARTICLE I THE CONTRACT DOCUMENTS

A. The "**Contract Documents**" consist of the following:

1. This Agreement including the following Exhibits attached to this Agreement [check if attached]:

**Exhibit A** - Scope of Work, identification of Property (defined below);

**Exhibit B** - Schedule of Values (the "**Schedule of Values**");

**Exhibit C** - Construction Schedule/Duration Time (the "**Construction Schedule**");

**Exhibit D** - Draw Schedule;

**Exhibit E** - Contractor Qualifications to the Contract Documents (the "**Qualifications**");

**Exhibit F** - Civil Engineering Drawings and Specifications ("**Drawings**");

**Exhibit G** - Insurance Requirements;

2. The Schedule of Values incorporates all costs to be incurred by Contractor in order to perform the Work.

B. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work (as defined below) by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. All of the documents described in this Article form the Contract Documents, and are as fully a part of this Agreement as if attached to this Agreement or repeated herein. In the event of any inconsistencies

or conflicts in the Contract Documents, the following order of said documents shall control: (i) this Agreement; (ii) the Contractor Qualifications to the Contract Documents; (iii) the approved Drawings; (iv) the approved Specifications; and (v) the other Contract Documents. Contractor shall endeavor to provide the greatest quantity, highest quality or more stringent material set forth in the Contract Documents.

## **ARTICLE II**

### **THE WORK; COMPLIANCE WITH DRAWINGS**

Contractor shall perform all necessary scheduling, procurement, supervision, construction, and construction management services and supply all necessary labor, materials, equipment, and related work and services, all as provided for in or reasonably inferable from the Contract Documents (collectively, the "**Work**"), at the property located at the real property which is also described on **Exhibit "A"** attached hereto (the "**Property**") in order to complete Project (the "**Project**").

A. Contractor agrees that all Work shall strictly comply with the Drawings and Specifications and other Contract Documents, as the same may reasonably be interpreted from time to time, as if originally specified in the Contract Documents. In the event of any conflict between the Specifications and the Drawings, the Specifications shall control. In the event of any conflict between the Laws (defined below) and the Drawings or Specifications, the Laws shall control.

B. Contractor will be responsible for coordinating all tests and inspections of the Work with Municipality, Utility, Owner and/or Engineer as appropriate or with others, so as to cause no delay in completion.

C. Contractor represents and warrants to Owner that Contractor and all Lienors are bound by the Drawings and Specifications and other Contract Documents as they relate to any portion of the Work performed by said parties. Contractor shall pay for any revisions to plans and any corrective work relating to Contractor errors and/or omissions.

D. In the event Owner incurs any expenses associated with revisions to the Drawings, Specifications and/or corrective work relating to Contractor errors and/or omissions, Owner may deduct such costs from payments due to Contractor, after Contractor fails to correct its error and/or omission within 7 days after being notified in writing by Owner.

E. It is the intent of Owner and Contractor that the Drawings and Specifications provide for the construction of completed and tested work by Contractor, including all devices, fasteners, materials or other work not shown in the Drawings and Specifications but which may be reasonably inferred there from and any and all incidental accessories necessary to make the Work complete and operable in all respects (even if not specified in the description of the Work, but necessary for proper installation and operation of the Work under the Drawings and Specifications), all of which shall be included as part of the Work. Owner shall have the right, at any time, to supplement the Drawings and Specifications for the Work with consistent drawings

and schedules and, upon doing so, such drawings and schedules shall immediately become part of the Contract Documents with additional payment and time, if any, governed by the Permissible Change Order section.

F. Prior to providing a municipality any notes, recording videos, test results and the like, Contractor shall first provide a copy to Owner for review.

G. Contractor shall place a minimum of 6” of topsoil in the common areas and swales of the development.

H. Grading is to be performed after stabilization of streets.

I. Contractor shall return to grade and backfill the ROW and easement areas upon completion of dry utility installation.

J. Contractor shall verify that positive drainage is occurring in the common area / playground settings.

K. Abnormal dewatering is to be categorized as anything larger than a 4” pump.

L. Contractor shall be responsible for utility location and marking.

### **ARTICLE III** **TIME OF COMMENCEMENT AND COMPLETION**

A. Contractor shall commence and diligently prosecute the Work pursuant to the Contract Documents as of the date on which Owner delivers a notice to proceed to Contractor ("**Date of Commencement**").

B. Contractor shall Substantially Complete (as defined below) the Work on or before May 12th, 2023 (the "**Substantial Completion Date**").

C. The terms "**Substantial Completion**" and "**Substantially Complete**" shall mean such time as: (a) the Work is completed in a finished condition consistent with the Drawings and Specifications and other applicable Contract Documents, sufficient for Owner to be able to utilize the Project for its intended purpose in the sole opinion of Owner; (b) Contractor is in compliance with the payment and lien provisions of the Contract Documents; (c) Contractor has completed its site cleanup and restoration, including, without limitation, removal of all excess materials, rock, sand, paving and miscellaneous debris, supplies, equipment and trailers; (d) all temporary utilities have been disconnected, if requested by Owner, (e) Contractor has complied with all other provisions of the Contract Documents, other than those that pursuant to their express terms are to be complied with subsequent to Substantial Completion; (f) the cost to correct the remaining "punch list" items does not exceed 5% in the opinion of Owner; and (g) the municipality where the Project is located has issued a temporary certificate of occupancy, or its equivalent, for the Project.

D. The term "**Final Completion**" shall mean such time after Substantial Completion as: (a) a Certificate of Final Payment has been issued by the Engineer (as defined below), (b) all

"punch list" items have been fully completed to the satisfaction of Owner and Engineer; (c) the final certificate of occupancy, or its equivalent, and all final governmental and utility authority permits for the Work have been issued; (d) Contractor has delivered to Owner all manufacturer and subcontractor guarantees and warranties; (e) Contractor has delivered Contractor's final affidavit to Owner evidencing no outstanding monies due from previous payments and all releases of lien complying with all applicable statutes, as well as satisfactions of lien for any claims of lien filed on account of the Work, and such other affidavits, waivers and releases as Owner may reasonably require in order to assure lien-free completion of all of the Work (including any equitable lien claims); (f) Contractor has provided conditional releases of lien (the condition being only the clearance of Owner's Final Payment) to Owner and shall provide Owner with all unconditional releases of lien within two (2) days after receipt of Final Payment (as defined below); (g) Contractor has delivered to Owner and Engineer all Shop Drawings, revised plans, hand marked as-built drawings, and all other information necessary so that Engineer can issue final "as built" drawings for the Work detailing all changes or deviations from the original Contract Documents; (h) Contractor has fully cleaned and restored the site with respect to all of the final punch list work; and (i) Contractor has complied with all other requirements of the Contract Documents and any reasonable requirements of the Owner.

#### **ARTICLE IV** **THE CONTRACT SUM**

A. For the performance and completion of the Work, Owner shall pay to Contractor an amount equal to the total amount reflected on the attached Schedule of Values **Fifty-Five Thousand Four Hundred Eighty-Five Dollars and Zero Cents (\$55,485.00)**. (the "**Contract Sum**"). Owner shall pay Contractor the Contract Sum in monthly progress payments (each a "**Progress Payment**") for Contractor's performance of the Contract, as more fully described below.

B. The Contract Sum is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents. The Contract Sum includes all permits, fees, inspection costs and/or sales and use taxes with respect to the Work required by any division of the federal, state or local government and all temporary utility hook-up and/or connection fees. The Contract Sum is based upon labor performed, materials furnished or services rendered, including, but not limited to, all taxes levied or assessed against Owner or Contractor related to the Contractor's Work. Where the law requires any such tax to be stated and charged separately, the total of all items included within the Work and the added tax shall not exceed the Contract Sum stated herein. Owner shall not be responsible for paying to Contractor or any subcontractor, sub-subcontractor, laborer or materialman, any sum of money the aggregate of which when combined with all other monies owed or paid by Owner on account of the Work for which Contractor is responsible, would exceed the Contract Sum, as same may be amended by Permissible Change Orders (as defined below) issued and resolved pursuant to this Agreement.

C. The Contract Sum may only be amended or modified through a Permissible Change Order issued and resolved pursuant to this Agreement. Contractor shall not be entitled to an increase in the Contract Sum or payment or compensation of any kind from Owner for costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising

because of delay, disruption, interference, or hindrance except as expressly provided in a Permissible Change Order.

**ARTICLE V**  
**PROGRESS PAYMENTS & FINAL PAYMENT**

A. Owner shall make Progress Payments to Contractor based upon written applications for payment (each an "**Application for Payment**") submitted by Contractor to Owner (and, if applicable, the Engineer) pursuant to the attached Draw Schedule, in accordance with the Contract Documents [and, if there is an Engineer whose job includes reviewing Applications for Payment, written certificates for payment (each a "**Certificate for Payment**") issued by Engineer in accordance with the Contract Documents]. Each Application for Payment shall contain such information as required by the Contract Documents and as may be reasonably required by Owner and shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Applications for Payment shall be on form designated or approved for such use by Owner.

B. Applications for Payment shall be submitted to Owner and Engineer (if applicable) only in a completed form and no later than the 25th day of a calendar month with the billing projected to the end of such month. In order to be in a completed form, each Application for Payment shall include copies of all supporting documentation reasonably required by Owner, including, but not limited to, Contractor's affidavit and all statutory partial releases of lien. Each final release of lien shall include a provision for the release of all claims and causes of action. All releases of lien must be provided prior to the next Progress Payment being made to Contractor.

C. Owner will have until the 15<sup>th</sup> day of the month following the month of proper and timely submission of an Application for Payment (the "**Review Period**") to review such Application for Payment and, if proper pursuant to the Contract Documents, issue a Certificate for Payment. Owner will make payments to Contractor no later than 30 days after the end of the Review Period.

D. Engineer or Owner may withhold a Certificate for Payment in whole or in part if in Engineer's or Owner's opinion the Work has not progressed to the point indicated and/or the quality of the Work is not in accordance with the Contract Documents. If Engineer is unable to certify payment in the amount of the Application for Payment, Engineer will notify Contractor and Owner. If Contractor and Engineer cannot agree on a revised amount, Engineer will promptly issue a Certificate for Payment for the amount for which Engineer is able to make such representations to Owner. Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in Engineer's opinion to protect Owner from loss for which Contractor is responsible, including, but not limited to loss resulting from (i) defective Work not remedied; (ii) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Owner is provided by Contractor; (iii) failure of Contractor to make payments properly to subcontractors or for labor, materials or equipment; (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; (v) damage to Owner or a separate contractor; (vi) reasonable evidence that the Work will not be

completed prior to the Substantial Completion Date as required by this Agreement; and (vii) repeated failure to carry out the Work in accordance with the Contract Documents.

E. Contractor hereby expressly waives any right to claim an equitable adjustment with respect to the Work and agrees to look solely to Contractor's lien rights under applicable law in enforcing any lien rights, which Contractor may now or hereafter have.

F. Owner shall have the right to make payment by joint or multiple party check to any Lienor listed on Contractor's affidavit or final affidavit as unpaid, or any other Lienor who has given written notice of non-payment to Owner or whose existence is otherwise known to Owner; except that Owner shall not directly pay any Lienor for claims of lien which have been transferred to bond. Contractor shall be a party on all joint or multiple party checks issued by Owner. Endorsement by any payee of a joint or multiple party check shall be deemed payment to that party for the full amount of the check. The acceptance of the Final Payment by Contractor or other Lienor shall release Owner from any further liability for any additional payments or compensation in connection with the construction of the Work, unless otherwise agreed in writing at that time.

G. The final payment for the Work (the "**Final Payment**") shall be due 45 days after the date Contractor achieves Final Completion.

H. Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

I. Owner shall not be deemed to be in breach of this Agreement by reason of the withholding of any payment to Contractor pursuant to any provision in the Contract Documents if the Work in question has been rejected by any government authority, provided such rejection is attributable to Contractor's failure to adhere to the Contract Documents.

J. Neither Final Payment nor any remaining retained percentage shall become due until Contractor submits to Engineer and/or Owner (i) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's Property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner; (iii) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv) consent of surety, if any, to Final Payment; and (v), if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Agreement, to the extent and in such form as may be designated by Owner.

## **ARTICLE VI** **RETAINAGE**

A. Owner may, at its option, withhold retainage from all payments due to Contractor under the Contract Documents as follows:

1. 10% retainage for all Work performed; and
2. An additional amount, if any, equal to the cost, as estimated by Owner or Engineer, of correcting any Work which Owner or Engineer concludes does not comply with the Contract Documents.

B. Owner shall not withhold retainage on insurance or bond premiums.

## **ARTICLE VII** **ENGINEER**

Owner has engaged or is expected to engage an Engineer for the Project (the "**Engineer**"). In the event Owner engages multiple Engineers in connection with the Work or the Project, the term "**Engineer**" as used in the Contract Documents shall, unless otherwise specified by Owner at any time, mean and refer to the particular Engineer or engineer responsible for the portion of the Work at issue. Furthermore, with respect to those portions of this Agreement which refer to submissions to or approval by the "**Engineer**," such term will refer to the particular Engineer or engineer or contractor or consultant engaged by Owner to review and approve such submissions. Owner shall have the right to replace the Engineer at any time. If, however, Owner has not and does not engage an Engineer for the Project, then applicable portions of this Agreement shall be interpreted as if no reference was made to the "**Engineer**." By way of example, if there is no Engineer, Applications for Payment shall be directed solely to and approved by Owner.

## **ARTICLE VIII** **CONTRACTOR**

A. Contractor represents and warrants to Owner that Contractor is a licensed contractor under the Laws of the state where the Project is located (the "**State**"). Contractor shall supervise and direct the Work using Contractor's best skill and attention. Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give timely written notice to Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from Engineer and Owner.

B. Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, subcontractors, lower tier contractors, materialmen, suppliers, and laborers and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, Contractor or any of its subcontractors.

C. Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

## **ARTICLE IX**

### **COMPLETION OF WORK**

A. Within 15 days after the Date of Commencement, Contractor will provide Owner with a revised version of the attached Construction Schedule which shall: (i) be in a detailed critical path method setting forth the dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents; (ii) provide a graphic representation of all activities and events that will occur during the performance of the Work; (iii) shall not exceed the time limits for Substantial Completion or Final Completion of the Work, or any portion thereof, under the Contract Documents; and (iv) be reasonably satisfactory to Engineer and Owner. The Construction Schedule will be used by Contractor as the basis for controlling the progress of the Work so as to ensure timely completion of the Work. Subject to time extensions resulting from Permissible Change Orders, Contractor shall strictly comply with, and conform to, the Construction Schedule.

B. The Construction Schedule shall be updated and revised, effective as of the first business day of each month (or sooner if reasonably requested by Owner and/or Engineer), in order to accurately reflect the scheduled date of Substantial Completion. Such updates and revisions of the Construction Schedule shall be delivered to Owner and Engineer no later than the third business day of each month, shall be subject to the approval of Owner and shall not relieve Contractor from its obligation to achieve Substantial Completion of the Work by the Substantial Completion Date. A written copy of the Construction Schedule, as updated or revised, shall be delivered to the Owner and Engineer and, if requested, also provided in electronic form (by e-mail or compact disk). Failure to furnish Owner and/or Engineer with a revised Construction Schedule within 7 business days of receipt of a written request shall constitute a material default hereunder. If requested by Owner, on each Monday during Contractor's performance of the Work, Contractor shall submit to Owner and Engineer a two week "look ahead" schedule which, shall at all time, set forth Contractor's construction plans for the upcoming two week period. Notwithstanding anything to the contrary, the Substantial Completion Date and date of Final Completion set forth in the Construction Schedule attached as **Exhibit C** shall only be modified with the Owner's prior written consent.



C. Contractor shall prepare on at least a monthly basis, and shall deliver to Owner and Engineer on the first business day of each month, a detailed written progress report in a form, and of a character, reasonably approved by Owner (each a "**Progress Report**"). The Progress Report shall specify, among other things, the estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefore and a revised completion schedule. Each Progress Report shall contain a revised Construction Schedule, as well as a list identifying all pending Change Orders (as defined below), if any, modifications, bulletins and other relevant issues to the construction of the Project and the status of such issues.

D. The Contractor shall attend weekly progress meetings at the Project site or at such other time and frequency as the Owner requires. The progress of the Work shall be reported in detail with reference to the current Construction Schedule. Each subcontractor shall have a competent representative present at each meeting to report the condition of the subcontractor's work and to receive information discussed at the meeting. Contractor shall issue detailed meeting minutes, in writing, within 48 hours after each progress meeting.

E. Time is of the essence with respect to all of the obligations of Contractor in the Contract Documents. Contractor shall strictly comply with, and conform to, the Construction Schedule attached hereto and all amendments and supplements thereto, the failure of which shall constitute a material default hereunder.

F. Contractor shall not be precluded (and is encouraged as necessary to meet time schedules) from working additional hours or days, as and if permitted by local ordinances and other applicable Laws. Saturday shall be designated as a "make up day" in order to ensure that Contractor adheres to the approved Construction Schedule. Such a "make up day" shall be utilized by Contractor when Contractor loses time on the Project or falls behind on the Construction Schedule from situations which include, but are not limited to, failed inspections, inclement weather delays, etc. However, in no event shall Owner incur any additional costs or expenses as a result of such a decision by Contractor or any subcontractor, nor shall Owner incur any additional costs or expenses as a result of, to work on a Saturday "make up day."

## **ARTICLE X**

### **LIQUIDATED DAMAGES FOR DELAY**

A. Time shall be of the essence with regard to the Substantial Completion and Final Completion of the Work.

B. In the event Contractor does not achieve Substantial Completion of the Work on or before the date that is 15 days after the Substantial Completion Date, Contractor shall be liable to pay Owner liquidated damages in the amount of \$500 per day, on a day-for-day-basis, from and including the date that is 15 days after the Substantial Completion Date until the date that the Work is Substantially Complete.

C. Contractor acknowledges and agrees that the actual delay damages which Owner will suffer in the event of a delay in timely achieving Substantial Completion of the Work are

difficult, if not impossible, to ascertain and that the liquidated damages described above are a fair and reasonable estimate of the delay damages which Owner would suffer in the event of such delay.

D. Owner may in its sole discretion: (i) deduct the aforesaid liquidated damages from any unpaid amount then or thereafter due Contractor under the Contract Documents; or (ii) deduct the liquidated damages from any retainage or other monies due Contractor from Owner.

E. Any liquidated damages not so deducted from any unpaid amounts due Contractor shall be due and payable to Owner within 10 days after written demand, together with interest from the expiration of such 10 day period at the rate equal to two hundred basis points above the Prime Rate (as published in the *Wall Street Journal*) in effect at such time.

F. Contractor and Owner waive claims against each other for consequential damages arising out of or relating to the Contract Documents.

## **ARTICLE XI** **TESTS AND INSPECTIONS**

A. All tests and inspections required by the Contract Documents with respect to the Work shall be scheduled and/or arranged for by Contractor so as to cause no delay in the progress of the Work. Contractor shall be responsible for paying for all testing.

B. In the event any retesting or re-inspection of the Work is necessary on account of any rejection of defective Work, Contractor shall bear all costs and expenses of such retesting or re-inspection without reimbursement by Owner.

C. If the Contract Documents or any applicable law, rule or ordinance requires any phase of the Work to be specially tested or approved, Contractor shall give Owner and Engineer timely notice of Contractor's readiness for observation or inspection. If the inspection is by an authority other than Owner, Contractor will arrange for such inspection and promptly advise Owner and Engineer of the date fixed for such inspection and any required certificates of inspection being secured.

D. Any special or other inspector engaged for the Project pursuant to any law, code, ordinance, rule or regulation, shall not be deemed an agent or representative of Owner, but, rather, shall be deemed an agent or representative of the governmental authority to which the inspector renders reports or certifications.

## **ARTICLE XII** **UNCOVERING OF WORK**

A. If a portion of the Work is covered contrary to Owner's or Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by Engineer or Owner, be uncovered for Engineer's examination and be replaced at Contractor's expense without change in the Contract Time or Substantial Completion Date.

B. If a portion of the Work has been covered that Engineer or Owner has not specifically requested to examine prior to its being covered, Engineer or Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate change order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at Contractor's expense.

### **ARTICLE XIII** **CHANGE ORDERS**

A. The parties agree that the Contract Documents are intended to contemplate the construction of the Project without any expense to Owner in excess of the Contract Sum.

B. Except for Permissible Change Orders as provided below, Contractor shall not be entitled to request or obtain a time extension or cost change order.

C. The term "**Permissible Change Order**" shall consist only of the following:

1. Change orders initiated by, or at the request of, Owner in connection with additional or different work not reasonably contemplated under the Contract Documents. Engineer shall determine in its sole discretion whether such additional or different Work was or is reasonably contemplated under the Contract Documents. Contractor and Owner shall be bound by such determination but shall reserve their rights to challenge Engineer's determination at the completion of the Project.

2. Change orders due to Force Majeure. The term "**Force Majeure**" shall be defined as an unexpected and irresistible force or act of God resulting in a loss without the intervention of man that could not have been, under any set of circumstances, prevented had Contractor exercised reasonable prudence, diligence and/or care. Rain delays shall not be considered a Force Majeure, and any time extension or cost increase requested by Contractor must be submitted to Owner with supporting documentation to show the delay caused by a rain event. In the event of such an occurrence, Contractor may be entitled to reasonably extend the Substantial Completion Date by the number of days equivalent to the extent of the actual delay to the critical path, and may be entitled to submit a change order for a reasonable adjustment to the Contract Sum. Normal local weather conditions shall be considered by Contractor in the preparation of the Construction Schedule by factoring in an amount of anticipated weather delay through Substantial Completion. Force Majeure does not include, without limitation, shortage of laborers, unanticipated site conditions, and unusual delay in deliveries. Force Majeure may include, in the Owner's sole discretion, Contractor's inability to obtain materials or supplies if such a delay impacts the critical path of the Project.

3. Change orders resulting from Field Inspector requirements not reflected on the Drawings and Specifications or other applicable Contract Documents, provided that such requirements change the Work required by the Drawings and/or Specifications.

D. In the event Owner initiates a change order for Work to be performed or eliminated from the Contract Documents, Owner and Contractor shall negotiate in good faith with respect to a determination of the change in the Contract Sum, if any, or the amount of the time extension or reduction, if any, necessitated by such change order. The cost quoted by Contractor for change orders shall be within standard industry rates and shall be submitted with a breakdown of labor, material, overhead and profit subtotal amounts.

E. In the event Owner and Contractor are unable to agree upon a change in the Contract Sum or the amount of time extension or reduction, Engineer shall, at the request of either Owner or Contractor, determine the change in the Contract Sum or time extension or reduction, if any. Contractor and Owner shall be bound by such determination, but shall reserve their rights to challenge Engineer's determination at the completion of the Project. During the pendency of any such determination, or approval by Owner of a submitted change order, Contractor shall continue with the Work including the Work proposed to be included within a change order, but without prejudice to its rights, provided that Owner has delivered to Contractor a work authorization form. If there is no Engineer, and if Owner and Contractor cannot mutually agree on the change in the Contract Sum or the amount of time extension or reduction, then either Owner or Contractor may elect to submit such disagreement to binding arbitration by an Engineer or engineer licensed to practice in the State (the "**Arbitrator**"), who will be chosen mutually by Owner and Contractor; provided, however, that if Owner and Contractor cannot agree on the Arbitrator, the Arbitrator shall be chosen by the head of the local professional organization governing Engineers.

F. In the case of a change, which includes both additions to and deletions from the Work, the adjustment in the Contract Sum shall be based upon the net difference in the cost attributable to the changes.

G. No order, statement or conduct of Owner or its representatives or Engineer shall be treated as a change order or a construction change directive, nor entitle Contractor to an equitable adjustment in the Contract Sum or extension of the Contract Time, unless pre-approved in writing by Owner.

H. Under no circumstances shall a change order be binding upon Owner unless submitted in writing and approved in writing by Owner before such time that any work described within the change order is performed. Unless documented by a written change order, any claims for additional work, compensation or time performed by Contractor shall be deemed waived.

**ARTICLE XIV**  
**INTENTIONALLY OMITTED**

**ARTICLE XV**  
**ROYALTIES, PATENTS AND COPYRIGHTS**

Contractor shall pay all royalties and license fees, if any are applicable. Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold Owner and

Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or Engineer. However, if Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to Engineer or Owner.

## **ARTICLE XVI**

### **SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

A. The term "**Shop Drawings**" shall mean drawings, diagrams, schedules and other data (if any) specially prepared for the Work by Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. The term "**Product Data**" shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work. The term "**Samples**" shall mean physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals.

B. Contractor shall review for compliance with the Contract Documents, approve and submit to Engineer and Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by Engineer or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or of separate contractors.

C. By submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents to Owner and Engineer that Contractor has (i) reviewed and approved them; (ii) determined and verified materials, field measurements and field construction criteria related thereto; and (iii) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

D. Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved in writing by Engineer and Owner. Shop Drawings for Engineering, structural, mechanical, and electrical work shall be submitted for approval to both Engineer and Owner. Before Final Payment is made for the Project, Contractor shall assemble for Engineer's and Owner's approval and for transmittal to Owner, three complete copies of all operating and maintenance data from all manufactures whose equipment is installed in the Work.

E. The Work shall be in accordance with approved submittals except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor has specifically informed Engineer in writing of such deviation at the time of submittal and (i) Engineer has given written approval to the specific deviation as a minor change in the Work; or (ii) a Permissible Change Order has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Engineer's approval thereof.

F. Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Engineer on previous submittals. In the absence of such written notice, Engineer's approval of a resubmission shall not apply to such revisions.

G. Contractor shall not be required to provide professional services that constitute the practice of engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section, Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. However, Contractor agrees that Owner is relying on its knowledge and experience to review and make recommendations concerning design criteria.

H. Contractor shall, at its own expense, and prior to the payment of the Final Payment, furnish to Owner, hand marked as built drawings (i) showing the final locations of concealed and below grade sanitary sewer, storm sewer, water mains and services, subsurface drains, conduits and any other buried work; and (ii) showing all Work performed by Contractor under the Contract Documents which was not shown on the drawings listed in the Contract Documents. Contractor will also provide operating and equipment manuals. Field changes shall be discussed with Owner and Engineer. All changes requiring engineering impact to work performed will require sign-off by Engineer and Owner.

I. Owner's review and approval of the Drawings and Specifications and any and all Shop Drawings, catalog cuts, Samples, or other submittals shall be for the sole purpose of providing Contractor with information as to Owner's objectives and goals with respect to the Work and not for the purpose of determining the adequacy, accuracy or completeness of such items. Once submitted all such items shall become the property of Owner.

J. Should the Drawings and/or Specifications fail to particularly describe the material or kind of goods to be used on any portion of the Project, it shall be the duty of Contractor to make inquiry of Owner and/or Engineer as to what materials and/or goods are best suited for that particular portion of the Project.

## **ARTICLE XVII**

### **DRAWINGS AND SPECIFICATIONS**

A. Contractor shall be furnished with Drawings and Specifications in PDF format, if available. Any other drawings, plans, and specification documents necessary for the execution and completion of the Work shall be furnished at Contractor's expense.

B. Contractor shall not use the Drawings, Specifications and other documents prepared by Engineer for any other project, and shall not have any common law, statutory or other rights with respect thereto. Contractor shall take such action as may be necessary to prevent their use on any other project by any subcontractor, sub-subcontractor or material or equipment supplier.

C. Contractor, subcontractors, sub-subcontractors and material and equipment suppliers are granted a limited license to use and reproduce applicable portions of the plans, Drawings and other documents prepared by Engineer appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the plans, Drawings and other documents prepared by Engineer. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to completion of the Project are not to be construed as a publication in derogation of such copyright or other reserved rights.

## **ARTICLE XVIII**

### **CONTRACTOR'S PERSONNEL**

A. Within 5 days after execution of the Agreement, Contractor shall submit to Owner for approval a list of all supervisory and managerial personnel to be associated with the Project. Such supervisory and managerial personnel, including, without limitation, the Superintendent and Project Manager (as such terms are defined below), shall not be changed without the prior written consent of Owner, which consent shall not be unreasonably withheld.

B. Greg Moody will be the full time supervising project manager ("**Project Manager**") for the Contractor's forces on the job. Project Manager must be competent, qualified and able to communicate in English. Project Manager shall have full power and authority to render decisions

and furnish information on behalf of and bind Contractor. If so requested by Owner for cause, Contractor shall change Project Manager to another individual mutually acceptable to Owner and Contractor. If Project Manager is temporarily absent, Contractor shall notify Owner of the person authorized to conduct business in his absence. Project Manager shall commence daily operations at the Project site within 3 days after the Date of Commencement.

**ARTICLE XIX**  
**INTENTIONALLY OMITTED**

**ARTICLE XX**  
**INDEMNIFICATION**

A. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner and its partners, affiliates, managers, members, officers, directors, employees, shareholders, agents, representatives and consultants, and their attorneys, lenders, Engineers and accountants (collectively "**Indemnitees**"), from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty or cause of action (including reasonable attorneys' fees and legal costs at trial and on appeal) arising from, in any way related to, or resulting from performance of the Work or to the acts, duties, omissions or obligations under the Contract Documents, including defective Work or defects attributed to defective Work, of Contractor or Contractor's subcontractors or sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in the Contract Documents.

B. Indemnitees shall promptly advise Contractor in writing of any action or legal proceeding to which this indemnification may apply and Contractor, at its expense, shall assume on behalf of the indemnified party, and conduct with due diligence and in good faith, the defense of such action or legal proceeding with counsel reasonably satisfactory to the indemnified party; provided that the indemnified party shall have the right to be represented by advisory counsel of its own selection and at its own expense. In the event of the failure of Contractor to obtain counsel to defend any such claim against Indemnitees, or to pay any final judgment entered against any Indemnitee as a result of such a claim, in accordance with this indemnification, the indemnified party at its option and without relieving Contractor of its obligations hereunder, may perform such obligations, but all costs and expenses so incurred by the indemnified party in that event shall be reimbursed or, at the option of Owner, shall be deducted from any monies owed to Contractor by Owner together with interest at the maximum legal rate from the date any such expense was paid. Indemnitees may retain counsel on their own behalf in connection with such claim and/or judgment in the event of default by Contractor hereunder and shall be reimbursed by Contractor for all costs thereof.

C. The parties agree that if any indemnification provision or portion of any indemnification provision herein is interpreted in a manner which would cause a violation of any part of applicable Laws, the indemnification provision or portion of any such indemnification provision which is deemed to be in violation of such applicable Laws shall be deemed void and



unenforceable and the remaining indemnification terms and provisions of this Agreement shall be unimpaired and shall remain in full force and effect.

**ARTICLE XXI**  
**TERMINATION BY CONTRACTOR**

A. If any of the events described below occurs, Contractor shall have the right to terminate this Agreement if Owner does not cure such event within 7 days after the delivery by Contractor to Owner of written notice of the occurrence of such event:

1. If the Work is stopped for a period of 5 consecutive days or a total of 60 days in any 365 day period through no act or fault of Contractor or a subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor.

2. If there is a proven material breach by Owner of the terms and provisions of this Agreement, and such breach continues for 30 days after written notice from Contractor to Owner of such breach, provided that such 30 day period shall be extended if Owner commences to cure such breach within such 30 day period and thereafter diligently continues such cure.

B. If Contractor terminates this Agreement pursuant to this Article XXI, Owner shall be responsible to pay Contractor for all costs of the Work properly performed up to the effective date of termination and reasonable demobilization costs reduced by any Owner offset. All prior payments shall be applied to the amounts due hereunder. In no event shall the total payments due Contractor under this Agreement exceed the Contract Sum, and in no event shall Contractor be entitled to any additional damages or compensation.

**ARTICLE XXII**  
**SUSPENSION BY OWNER**

Owner may at any time, with or without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine. The Contract Sum and the Substantial Completion Date shall be adjusted for increases in the cost and time caused by such suspension, delay or interruption. No adjustment shall be made to the extent that (i) performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or (ii) an equitable adjustment is made or denied under another provision of this Agreement.

**ARTICLE XXIII**  
**TERMINATION BY OWNER**

A. Owner may at any time, with or without cause, terminate this Agreement by delivering written notice to Contractor. Upon receipt of such written notice from Owner, Contractor shall (i) cease operations as directed by Owner in the notice; (ii) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and (iii) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all

existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

B. If Owner terminates this Agreement, it may in its sole discretion continue the Project with the same or other subcontractors and Contractor shall take all steps to transfer the permit(s) to a new contractor of Owner's choice without any delay whatsoever.

C. Upon termination of this Agreement by Owner for any reason other than the fault of Contractor or a subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, Owner shall pay Contractor all costs of the Work properly performed up to the effective date of termination and reasonable demobilization costs reduced by any Owner offset. All prior payments shall be applied to the amounts due hereunder. In no event shall the total payments due Contractor under the Agreement exceed the Contract Sum, and in no event shall the Contractor be entitled to any additional damages or compensation.

D. Upon termination of this Agreement by Owner as result of the fault of Contractor or a subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, Owner shall pay Contractor all costs of the Work properly performed up to the effective date of termination, less the expenses and costs incurred by Owner as a result of such default, including, but not limited to, any expenses arising from, or related to, the transfer of the permits and/or the correction of Contractor's Work, to the extent necessary to comply with the Contract Documents. All prior payments shall be applied to the amounts due hereunder. In no event shall the total payments due Contractor under the Agreement exceed the Contract Sum, and in no event shall the Contractor be entitled to any additional damages or compensation.

E. At Owner's sole discretion, Owner may terminate the portion of the Work dedicated to Sidewalks at anytime prior to Contractor beginning the Sidewalk portion of the Work. If Owner does terminate the Sidewalk portion of the Work, then each party hereto shall be released of any obligation herein as it relates to the Sidewalk portion of the Work.

#### **ARTICLE XXIV** **LABOR DISPUTES**

In the event of any labor dispute in which Contractor or any one of its subcontractors is involved, regardless of whether or not Contractor caused and/or is directly involved therewith, and regardless of the reason for the labor dispute, Contractor agrees to perform the Work as scheduled. Any such labor dispute shall not be deemed an excuse by Contractor for failure to perform nor result in any increase to the Contract Sum or Substantial Completion Date. As used in this Agreement, labor disputes shall be deemed to include any strike or refusal to cross any picket line by any laborer or any other person regardless of the person, company or employer to which such action is directed. The term shall further include any stoppage, abandonment, interference or interruption of the Work by any person, labor organization, company or others.

**ARTICLE XXV**  
**CONTINUATION OF WORK**

Notwithstanding anything to the contrary, during the pendency of any dispute, disagreement or other claim, Contractor shall carry on and maintain the progress of the Work pursuant to the Contract Documents, without prejudice to any of its rights.

**ARTICLE XXVI**  
**CONSTRUCTION LIENS**

A. Contractor shall ensure that no construction liens, or any encumbrances in the nature thereof or any other encumbrances whatsoever (including equitable lien claims), shall be filed or maintained by Contractor, or by any subcontractors, sub-subcontractors, materialmen, laborers or other lienors (each, a "**Lienor**") in connection with any Work for which Owner has made payment for sums due and owing or for which payment is not yet due. As a condition to the receipt of each Progress Payment from Owner, Contractor must furnish contemporaneously with each and every Application for Payment, all conditional releases of lien (the only condition being Owner's payment) from Contractor and each Lienor, in the form prescribed by Owner or title insurer from time to time, together with an interim contractor's affidavit and release of lien in the form required by Owner and/or title insurer. Within two (2) days after Owner makes payment to Contractor, Contractor must provide Owner with all unconditional releases of lien from Contractor and all Lienors. Further, as a condition to the receipt of the Final Payment, the Contractor shall provide Owner with a final conditional release of lien from each Lienor (the only condition being payment), in the form prescribed by Owner and/or its title insurer from time to time all subject to the condition that the Final Payment being made to Contractor is paid within the time period specified herein. Within two (2) days after Owner makes payment to Contractor, Contractor must provide Owner with all unconditional releases of lien from Contractor and all Lienors.

B. Each release of lien given to Owner shall waive and release any lien rights of the Lienors to the extent payment is made to Contractor with respect to any Work performed through the date of that Progress Payment.

C. Contractor agrees to indemnify, defend and hold harmless Owner from and against any and all liens or other claims whatsoever filed against Owner or Owner's Property by any Lienor for work performed or materials or services furnished in connection with Work for which Contractor has been paid or for which payment is not yet due at the time the lien is filed.

D. In the event a claim of lien is filed against Owner's Property in connection with work and/or materials covered by this Agreement, for which Contractor has received payment or for which payment is not yet due, Contractor shall cause the same to be satisfied within 7 days following the date of filing, or in the alternative, shall cause the claim of lien to be transferred to bond. In the event any liens are not cleared of record within 7 days of filing, Owner shall have the right to settle, satisfy or bond-off such lien at Contractor's cost and expense and offset the cost

against the next payment due to Contractor under this Agreement, and Owner shall be entitled to all other remedies available at law or in equity.

E. The provisions of this Article shall be deemed an independent covenant of Contractor and shall be effective with respect to all Work performed and materials or services furnished under any Permissible Change Orders between Owner and Contractor or any other agreement for extra work with respect to the Project.

F. Contractor shall provide to Owner names and contact information for every subcontractor hired by Contractor that provides labor, materials or other services on the Property and in furtherance of the Work. Owner may from time to time contact any subcontractors and confirm that timely payment is being paid to them for the Work. In addition, Owner may request from subcontractors individual lien waivers from them after payment to Contractor for the Work. Contractor shall notify all subcontractors of this provision.

## **ARTICLE XXVII** **NOTICES**

All notices shall be in writing and shall be delivered by hand delivery, overnight courier, facsimile with printed confirmation of transmittal, or by certified mail with return receipt requested, postage pre-paid, or email, in all cases directed to the parties at the addresses shown below. Mailed notices will be effective 3 business days after mailing, and all others shall be effective upon receipt. Addresses may be changed by notice to the other party, such notice to be effective upon receipt.

Notices to Owner:

Sunbrook Development, LLC  
6330 E. 75th St., Suite #156  
Indianapolis, IN 46250

Notices to Contractor:

Sitecrete, LLC.  
1401 South Holt Road  
Indianapolis, IN 46241

## **ARTICLE XXVIII** **ACCEPTANCE OF SITE AND DRAWINGS AND SPECIFICATIONS**

A. Contractor represents and warrants to Owner that Contractor is a skilled professional with the requisite knowledge and ability to perform an examination and review of the Project site and the Drawings and Specifications for the Work. Contractor acknowledges and agrees that prior to the execution of this Agreement, Contractor has been to the Project site, examined the Project site, understands the scope of Work to be done at the Project site, and has determined and takes professional responsibility for the Project site including any existing work or

improvements and states that except for latent defects which are not readily observable, the same are fit and proper to receive the Work in their present condition and Contractor waives all claims that same are not in accordance with all data and information with respect to the job site as specified in the Drawings and Specifications and/or as provided by Owner and Engineer and all engineers.

B. Contractor further represents and warrants that Contractor has reviewed the Drawings and Specifications to its full satisfaction and has undertaken the responsibility to determine that the Drawings and Specifications are to the best of its knowledge (i) substantially fit and proper for the performance of the Work; (ii) free from errors, omissions, and/or inconsistencies other than those set forth in the Qualifications, and (iii) provide sufficient information for Contractor, its subcontractors sub-subcontractors, laborers, and material suppliers to complete the Work for the Contract Sum and on or before the Substantial Completion Date. Contractor waives all claims to the contrary. Contractor also agrees to provide all of its subcontractors and sub-subcontractors with the Drawings and Specifications in their entirety, not just that portion of the Drawings and Specifications that corresponds to a particular trade's work.

C. Contractor shall promptly notify Owner and Engineer in writing (i) of any defects, errors, discrepancies or omissions discovered in the Contract Documents; and (ii) if at any time the Contract Documents are not in compliance with applicable Laws. If Contractor performs any part of the Work relating to such known errors, discrepancy, omissions, or duplications in the Contract Documents, or which Contractor knows are or were in violation of any such applicable Laws, except in accordance with the express written instructions of Owner, Contractor shall bear all costs of correction and adverse scheduling impacts attributable thereto.

D. Contractor's agreement to the Contract Sum and the Substantial Completion Date shall constitute a representation and warranty that Contractor has made all reasonable and customary examinations and determinations that it deems necessary or appropriate and Contractor waives any claims against Owner for damage, additional compensation or delay based upon any deficiencies in the Project site or the Drawings and Specifications or other documents. Contractor agrees to promptly correct any deficiencies or defective Work without any increase in the Contract Sum and without any extension of the Substantial Completion Date.

## **ARTICLE XXIX** **INSURANCE**

A. Prior to commencement of any Work under the Contract Documents and until Final Completion and final acceptance of the Work (or longer as set forth below), Contractor shall maintain and pay for the insurance described in **Exhibit G** attached.

B. All insurance coverages required of Contractor, any subcontractor, and any other parties performing the Work, shall be maintained without interruption from the commencement of the Work until three years after Final Completion with verification to Owner by annual issuance of certificates of insurance.

C. Owner shall not be responsible for any portion of the deductible, which may be applicable to damaged or stolen materials or Work of Contractor or its subcontractors, materialmen or laborers, covered by any insurance policy carried by Contractor or any of its subcontractors.

D. In the event of such loss or damage, Owner shall have the option of retaining insurance proceeds and paying Contractor for all Work performed to date whereupon this Agreement, at Owners option, shall terminate and Owner shall have no further liability to Contractor.

### **ARTICLE XXX** **STANDARD OF WORKMANSHIP**

A. Owner and Contractor agree that the quality of workmanship and finish shall be of superior quality, acceptable to Owner and shall be in full compliance with all federal, state and municipal governmental requirements and the Contract Documents.

B. The Work shall be in accordance with trade and industry standards, unless otherwise indicated in the Contract Documents. In the event of any conflict between trade standards and the Contract Documents, Contractor shall immediately bring such conflict to the attention of Owner and Engineer.

C. All workmanship performed by or through Contractor shall be performed by experienced laborers, operators or mechanics skilled in the applicable trade.

D. All materials shall be new and as called for in the Drawings and Specifications, and as required by all applicable codes and regulatory and governmental authority.

E. Engineer and Owner have the authority to reject Work that does not conform to the Contract Documents. Whenever Engineer or Owner considers it necessary or advisable, Engineer will have authority to require inspection or testing of the Work in accordance, whether or not such Work is fabricated, installed or completed. However, neither this authority of Engineer or Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Engineer or Owner to Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

F. Contractor shall promptly correct Work rejected by Engineer or Owner or failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. Costs of correcting such rejected or non-conforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for Engineer's services and expenses made necessary thereby, shall be at Contractor's expense.

**ARTICLE XXXI**  
**WARRANTY OF WORK**

A. Contractor represents and warrants to Owner that all Work, labor, materials and/or services furnished will be free of defect from the time of Substantial Completion of the Work until three (3) years from the date of such Substantial Completion, except for such longer periods as otherwise specified in the Contract Documents for a particular portion of the Work or as required by applicable law.

B. Unless otherwise set forth in the Drawings and Specifications, Contractor shall obtain warranties against any defects in workmanship and materials from all subcontractors and suppliers for a period of not less than three (3) years after acceptance by Owner of the Work, except that as to any aspects of the Work covered under the warranty provisions of applicable Laws, Contractor shall obtain warranties for the longer of: (i) the periods of time as are customary in those trades; (ii) the period of time set forth in the applicable Laws; or (iii) three (3) years after final acceptance by Owner of the Work.

C. Contractor shall furnish Owner with all manufacturer and dealer warranties and guarantees on equipment and materials, together with any other warranties or guarantees required by the Contract Documents. Contractor shall provide Owner with any additional warranty coverages that are contained in any material and equipment manufacturers' warranties.

D. All warranties and guarantees contained herein are in addition to, and do not invalidate, any other warranties made by Contractor to Owner or any other party pursuant to the Contract Documents or under applicable law.

E. Contractor warrants that it will make repairs to the Work promptly, diligently and continuously, and at its sole expense.

F. Contractor warrants that all Work, labor, materials and/or services furnished under this Agreement will be of good quality and new, free from defects and faults, new, and in conformance with the Contract Documents. Work, labor, materials and/or services not conforming to these requirements will be considered defective.

G. In case of emergencies, Contractor, within 24 hours of notice (verbal or written), shall diligently and continuously pursue any necessary repairs or replacements of defects until corrected and will restore the Work to the condition required by the Contract Documents.

H. Contractor shall restore both surface and subsurface, both collateral and primary, conditions disturbed during warranty work to their prior state as called for in the Contract Documents, including any improvements constructed by parties other than Contractor.

I. Contractor agrees that if Contractor, upon 7 days notice by Owner fails to diligently pursue correction of any deficiency or defect in the construction of the Project in a continuous and expeditious manner until completion, Owner may, in its sole discretion, act to have such deficiencies or defects corrected at Contractor's expense and such efforts by Owner shall not

invalidate any conditions of the Contract Documents or invalidate the on-going warranty obligations of Contractor.

J. Contractor's warranty obligations will survive the making of the Final Payment or any earlier termination of the Agreement. The provisions of this paragraph are supplementary to the provisions of any of the other Contract Documents relating to warranties and correction of defective work.

## **ARTICLE XXXII** **SIGNS**

Without the prior written consent and approval of Owner, which consent of Owner may be granted or withheld in its sole discretion, neither Contractor nor any of its subcontractors or affiliates shall publicly advertise the fact that Contractor is constructing the Work. Further, neither Contractor nor its subcontractors may place or erect any sign or other advertisement at the Project without the Owner's prior written consent, which consent of Owner may be granted or withheld in its sole discretion.

## **ARTICLE XXXIII** **CONDUCT OF WORKMEN**

Contractor shall be responsible for the proper behavior and conduct of all persons performing the Work and shall be responsible for removing from the job any workmen whose behavior is disruptive to the orderly progress of the Work. No alcoholic beverages or drugs of any kind are to be consumed on the jobsite. Any workmen found to have violated said regulations shall be immediately replaced by Contractor.

## **ARTICLE XXXIV** **OWNER'S RIGHT TO CARRY OUT THE WORK**

A. In the event Contractor fails to perform any of its obligations under this Agreement or other Contract Documents within any applicable cure period, Owner shall have the right to perform such obligations under Contractor's permit on behalf of Contractor.

B. Contractor shall be liable to Owner for all costs and expenses incurred in carrying out the obligations of Contractor, plus a 10% administrative fee to compensate the Owner for its additional expenses. Owner shall have the right to offset all such sums against any subsequent payments due to Contractor.

## **ARTICLE XXXV** **COMPLIANCE WITH LAWS**

Contractor shall be responsible for complying with all applicable requirements, laws, rules, regulations, codes, ordinances and statutes of all applicable federal, state, county, municipal and/or other governmental authorities (collectively, "**Laws**") in connection with its performance of the



Work. By way of example, and not limitation, Contractor shall (i) observe and strictly adhere to the provisions of the Occupational Safety and Health Act; (ii) comply with all laws, procedures, rules and regulations promulgated by the Equal Employment Opportunity Commission or other authority with regard to non-discrimination as the same applies to the Work; and (iii) construct the Project in full compliance with the Americans with Disabilities Act ("ADA") and all other applicable Laws, rules or regulations enacted by federal, state or local authorities and as the same may be amended, interpreted or enforced from time to time.

**ARTICLE XXXVI**  
**JOBSITE**

A. Areas of the Project site which may be used by Contractor for its office and staging are limited and shall be approved by Owner and any authorities having jurisdiction over the site before Contractor commences the Work. Owner shall have the right to reasonably change the location of such areas from time to time upon reasonable notice to Contractor. Further, Contractor acknowledges that areas for parking vehicles and storing equipment and materials at the jobsite are limited. Contractor shall provide adequate supervision to ensure that no subcontractors or others performing the Work violate any of the foregoing restrictions.

B. Contractor in cooperation with Owner shall make arrangements for and furnish, at Contractor's cost and expense a portable toilet. In cooperation with Owner, Contractor shall insure that sufficient temporary toilet facilities are provided and maintained for the use of all workmen and workwomen on the Project. The temporary toilets shall be located where directed by Owner, as long as it is a reasonable location, from time to time and shall be relocated. The temporary toilets shall be kept in a sanitary condition at all times. Contractor shall be responsible for obtaining all necessary permits and approvals for the installation and use of the temporary utilities and facilities.

C. Contractor agrees to keep the jobsite in a clean and orderly manner at all times. If Contractor fails to keep the jobsite in a clean and orderly manner, Owner may, upon providing at least 72 hours prior written notice to the Contractor, perform such duties on behalf of Contractor. Any such costs, which are the responsibility of Contractor, may be offset by Owner against any payments due under this Agreement.

D. Intentionally omitted.

E. Intentionally omitted.

F. Contractor agrees to remain responsible for the reasonable preservation and protection of the Work at all times and during work stoppages or delays and further agrees to protect the Work from deterioration and/or damage until such time as the Work is accepted by Owner. If such delays or work stoppages are the fault of Contractor, no additional payments will be made by Owner to repair damage or restore deterioration, or otherwise correct deficiencies.

G. Contractor shall be responsible for the care, custody and control of the site of the Project. Owner shall not be responsible to provide job site security against vandalism, theft, breakage or damage to the Work and materials incorporated in the Work or stored at the job site (including temporary fencing or an on-site guard). Owner will not be responsible for any such vandalism, theft, breakage, casualty or damage to trailers, tools, equipment or other property of Contractor or others performing the Work. Contractor hereby waives all such claims. If Owner requires Contractor to obtain an on-site guard, Contractor shall be entitled to a Permissible Change Order for the additional cost.

## **ARTICLE XXXVII** **SUBCONTRACTORS**

A. Upon the request of Owner, Contractor shall furnish Owner with all subcontracts for any labor, services and/or materials to be furnished by any subcontractors, sub-subcontractors, laborers, and/or material suppliers on the Project. Owner has the right to reasonably reject any proposed subcontractors and vendors proposed by Contractor.

B. All subcontracts and purchase contracts shall be assignable to Owner without any change in the price or scope, in the event of any termination of this Agreement, all at the option and sole discretion of Owner.

C. Contractor shall include the provisions in this Article in all subcontracts and purchase contracts, either by specific wording or by reference to this contract provision, and all subcontracts shall provide that: (i) they are subject to the provisions of the Contract Documents; (ii) in the event this Agreement is terminated, such subcontracts may be assumed by Owner without additional cost; (iii) that all warranties shall inure to the benefit of Owner and Owner's assignees; and (iv) the subcontractor has made all necessary examinations, reviews and determinations of the Project site, Specifications and Drawings.

D. Owner shall be deemed to be a third party beneficiary of all subcontracts and purchase contracts. Contractor agrees that it is fully responsible to Owner for the acts and omissions of its subcontractors, sub-subcontractors, suppliers and anyone directly or indirectly employed by them, as it is for the acts and omissions of persons employed by Contractor. In addition, in the event that this Agreement is terminated, Contractor shall fully cooperate with Owner in the transferring/amending of the permits to reflect the new contractor.

E. Contractor represents that the subcontractors, manufacturers and suppliers engaged or to be engaged by it are familiar with the requirements applicable to them under the Contract Documents.

F. Contractor has the responsibility to ensure that all material and equipment suppliers, subcontractors and sub-subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and

delivery conditions, and that all materials and equipment are furnished and/or delivered to the Project in a timely manner.

G. Contractor shall coordinate its Work with Owner and with all other subcontractors, sub-subcontractors, material suppliers and laborers on the Project, as well as deliveries, storage, installations, and construction utilities, so as not to create any delay in the completion of the Project.

H. By appropriate written agreement, Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Work, which Contractor, by the Contract Documents, assumes toward Owner. Each subcontract agreement shall preserve and protect the rights of Owner and Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against Owner. Where appropriate, Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the subcontractor will be bound, and, upon written request of the subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. All warranties provided by the subcontractors, including all express and implied warranties in the Contract Documents and the agreements between Contractor and the subcontractors and all warranties provided by law, shall run to and be for the benefit of Owner, and Owner shall have a direct right of action against the subcontractors for any breach of said warranties.

### **ARTICLE XXXVIII** **STORED MATERIALS**

A. Stored materials must be pre-approved in writing by Owner. If stored materials are pre-approved and included in an Application for Payment, they shall be listed separately and attached to the payment request indicating item, quantity, cost and location if different from the construction site.

B. Materials shall not be stored off the construction site unless specifically approved by Owner and its insurer in writing, and then only for the time specifically approved.

C. Contractor shall assume the full cost and expense (without pass-through to the Owner) of any loss or damage to stored materials, even if Owner has given its written approval for on-site or off-site storage.

**ARTICLE XXXIX**  
**SITE SAFETY AND REPAIR**

A. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions in connection with the Work. Contractor shall give all notices and comply with all applicable Laws, ordinances, rules and regulations of any public authority relating to the safety of persons and property and their protection from damage, injury or loss.

B. Contractor shall protect adjoining private or municipal property, including, but not limited to, buildings and structures, foundations, landscaping, parking areas, walkways and underground systems, and shall provide barricades and/or temporary fences required to protect the safety of passers-by, as required by local building codes, ordinances or other Laws, governmental authorities, or the Contract Documents.

C. Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs, landscaping, and the property of third parties (including municipalities) resulting from the performance of the Work, whether by Contractor, its subcontractors, its sub-subcontractors, its material suppliers, its equipment suppliers, or its laborers. Contractor shall maintain streets in good repair and traversable condition, including but not limited to the repair and replacement of all sidewalks, streets and driveways.

D. Contractor shall use utmost care and precaution to protect all trees and landscaping on the job site, and Contractor shall remove only those trees and landscaping specified to be removed by the Drawings and Specifications. All trees and landscaping not specified to be removed by the Drawings and Specifications shall be protected.

**ARTICLE XL**  
**ADDITIONAL TERMS AND MISCELLANEOUS PROVISIONS**

A. Street grading to be performed after stabilization of streets in coordination with stabilization contractor.

B. Abnormal dewatering is to be categorized as “using anything larger than a 3-inch pump.”

C. Contractor shall be responsible for calling in their own locates.

D. Contractor shall ensure that positive draining is in common areas and playground settings (if applicable).

E. Contractor shall be responsible for clean-up and regrading so that seed/straw can be applied after utility work is completed.

F. In connection with any dispute or litigation arising out of the Contract Documents, the prevailing party shall be entitled to recover its attorneys' fees and costs incurred, including attorneys' fees and costs for litigation in any bankruptcy proceedings and at all trial and appellate levels.

G. Owner and Contractor respectively bind themselves, their successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Contract Documents. Notwithstanding the foregoing, Contractor shall not assign this Agreement without written consent of Owner.

H. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

I. Owner and Contractor both have participated fully in the negotiation and preparation of the Contract Documents and, accordingly, the Contract Documents shall not be more strictly construed against any one of the parties.

J. In the event any term or provision of the Contract Documents is determined by an appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of the Contract Documents shall be construed to be in full force and effect.

K. The Contract Documents represent the entire agreement between Owner and Contractor and supersede all prior negotiations, representations or agreements, whether written or oral.

L. Contractor's relationship with Owner is solely as an independent contractor and nothing contained in the Contract Documents shall be construed as creating a joint venture, partnership or employer/employee relationship.

M. This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute a single instrument.

N. No provision of the Contract Documents shall be deemed to have been waived by either party, either expressly, impliedly or by course of conduct, unless such waiver is in writing and signed by such party, which waiver shall apply only to the matter described in the writing and not to any subsequent rights of such party.

O. Owner and its partners, affiliates, managers, members, officers, directors, employees, and shareholders will have no personal liability with respect to any of the provisions of the Contract Documents. Contractor will look solely to Owner's equity in the property upon

which the Work is to be constructed for the satisfaction of any claims of Contractor, including, without limitation, the collection of any judgment requiring the payment of money by Owner. No other assets of Owner shall be subject to levy, execution or judicial process for the satisfaction of Contractor's claims.

P. The Contract Documents shall be governed and construed in accordance with the Laws of the State without giving effect to any conflict of the law's provisions. Contractor submits to the jurisdiction and venue of the state and federal courts in and for the county where the Project is located and waives any claim that the same is an inconvenient forum.

Q. Any additions, modifications or changes to the Contract Documents must be in writing and signed by the party against whom enforcement of such addition, modification or change is sought.

R. In interpreting the Contract Documents, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders, and captions and paragraph headings shall be disregarded.

S. All indemnities, representations, and waivers made by Contractor in favor of Owner, its agents, employees, successors or assigns, shall survive completion of the Work, the making of the Final Payment and any cancellation or termination of the Agreement.

T. The terms "knowledge", "recognize" and "discovers", their respective derivatives and similar terms in the Contract Documents, as used in reference to Contractor, shall be interpreted to mean that which Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required by the Contract Documents.

U. Neither this Agreement, nor any memorandum thereof, may be recorded in the public records and any such recording by Contractor shall be deemed a material default.

V. Except as otherwise specifically provided herein, in the event that Contractor causes the stoppage of the Work (or causes a substantial reduction of the speediness in which the Work is being performed) for any reason, without the written consent of Owner, for more than 5 consecutive days, Contractor shall be in default of this Agreement.

W. OWNER AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THE CONTRACT DOCUMENTS, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK OR ANY COURSE OF

CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN)  
OR ACTIONS OF ANY PARTY.

**[Signatures follow on next page]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

**OWNER:**

Sunbrook Development, LLC

By: \_\_\_\_\_

Name: Mark. D Gradison

Title: Manager

**CONTRACTOR:**

Sitecrete, LLC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**Exhibit A**  
**Scope of Work; Identification of Property**

**Exhibit B**  
**Schedule of Values**

**Exhibit C**  
**Construction Schedule**

**Exhibit D**  
**Draw Schedule**

**Exhibit E**  
**Contractor Qualifications to the Contract Documents**

**Exhibit F**  
**Engineering Drawings**

**Exhibit G**  
**Insurance Requirements**

## Exhibit “A” Scope of Work

- A. SCOPE OF WORK: The Scope of Work shall be inclusive of all items required to complete the construction, repair, and cleaning to industry and Owner’s standards. Additionally, contractor shall backfill sidewalk by others with topsoil, regrade roads after stabilization and final grade after installation of utilities.
  
- B. DESCRIPTION OF PROPERTY
  - a. Street Addresses: Point Rd
  - b. City: Lebanon
  - c. State: Indiana

# Exhibit “B” Schedule of Values

Proposal 3-16-23 - Sunbrook 4 - Sitecrete.pdf - Kofax Power PDF Standard

File Home Edit View Comment Advanced Processing Security Forms Connectors Help

Note Text Callout Box Check Spelling Annotate Highlight Cross-out Underline Draw Tools Search and Markup Active Markup Comment Processing Attachments

Address Report Asherwood.pdf C-501\_17011 Final Plat.pdf Bear Creek LR...ed 12-22-17.pdf Rejected by BC...k Ups (003).pdf WQ Sec 1 Record Plat.pdf 2023-00002262.pdf FedEx Ship Mana...ur Label(s).pdf Proposal 3-16-2... Sitecrete.pdf

Quantity	Description	Unit Price	Amount
4,125	LF of Roll Curb	\$ 12.76	\$ 52,635.00
65	SF of Common Area Sidewalk		\$ 1,400.00
	Maintenance Bond for Curb		\$ 1,150.00
	Maintenance Bond for Walk		\$ 300.00
<b>Total</b>			<b>\$ 55,485.00</b>

Jonas Lewandowski  
Customer  
Gradison  
Date  
3/16/2023  
Proposal Valid for 30 Days

Job Name  
Sunbrook 4

Location  
Lebanon, IN

Engineer  
Weihe

Date of Plans  
1/26/2022

8.50 x 11.00 in 1 of 1 197%

**Fifty-Five Thousand Four Hundred Eighty-Five Dollars and Zero Cents (\$55,485.00)**

# Exhibit “C” Construction Schedule

All work shall be completed by May 12th 2023.

## Exhibit “D” Draw Schedule

Monthly progress payments based on percent work completed described in  
Schedule of Values (Exhibit “B”)

# Exhibit “E” Contractor Qualifications to the Contract Document

(Please attach documents requested)

Contractor acknowledges that no licensing is required by municipality

# Exhibit “F” Engineering Drawings

Drawings Title: Sunbrook Section 4

Civil Engineer: Weihe Engineers

Date: March 31st, 2022

All work shall conform to the municipality set of stamped plans.

# Exhibit “G” Insurance Requirements

**General Contractor shall procure and maintain, and shall cause all sub contractors to procure and maintain, at their sole cost and expense, the following insurance coverages:**

**1. Workers’ Compensation:**

Coverage A. Statutory Benefits

Coverage B. Employers’ Liability limits of not less than:

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

If available by state law, coverage must include a waiver of subrogation endorsement in favor of, and naming Company, including its subsidiaries, partners, partnerships, affiliated companies, successors and assigns.

**2. Commercial Auto Coverage:**

Automobile Liability coverage (equivalent in coverage to ISO form CA 00 01) of not less than \$1,000,000 combined single limit, each accident, covering all owned, hired and non-owned autos. If contractor does not have any company owned vehicles, hired and non-owned auto coverage for the contractor must be evidenced through a general liability policy or auto policy.

**3. Commercial General Liability:**

Commercial General Liability coverage (equivalent in coverage to ISO form CG 00 01) of not less than:

Each Occurrence Limit	\$1,000,000
Personal Advertising Injury Limit	\$1,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
General Aggregate Limit (other than Products/Completed Operations)	\$2,000,000

The policy must include:

- a) Premises and Operations coverage with no explosions, collapse, or underground damage exclusion (XCU).
- b) Products and Completed Operations coverage. Contractor and subcontractor agrees to maintain this coverage for a minimum of ten (10) years following completion of its work.
- c) Standard ISO CG0001 0196 Contractual Liability coverage, or its equivalent, and a Separation of Insureds clause.
- d) Broad Form Property Damage coverage, including completed operations, or its equivalent.
- e) The work “performed on your behalf by a subcontractor” exception to the “Damage to Your Work” exclusion (Exclusion “I” in Section I of the ISO form CG 00 01 10 01 and earlier versions.) No limitation or restriction of this exception is allowed.
- f) An Additional Insured Endorsement (equivalent to ISO form CG 20 10) naming as additional insured: “Company, including its subsidiaries, partners, partnerships, affiliated companies, successors and assigns.”
- g) There shall be no exclusions for continuing or progressive losses not known by Subcontractor to exist prior to policy inception.
- h) Coverage must be on an “occurrence” form. “Claims Made” and “Modified Occurrence” forms are not acceptable.
- i) Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy



- j) There shall be no “pollution” exclusions, nor any of their equivalents.
- k) The CGL policy may not be subject to a self-insured retention (SIR) or deductible that exceeds \$10,000. Any and all SIRs must be susceptible of being satisfied under the CGL policy through payments made by additional insureds, co-insurers, and/or insureds other than the First Named Insured.
- l) An Additional Insured endorsement (on a form at least as broad as ISO’s CG 2010 11 85, or a combination of the CG 2010 or the CG 2038 or the CG 2033, and the CG 2037 10 01, 07 04, or 04 13 editions) naming Owner as additional insured.

**4. Property Insurance:**

General Contractor and all sub contractors shall maintain “Special Form” property insurance (commonly referred to as “all risk” or “special perils” coverage) in an amount equal to the full replacement cost of all Contractor’s real and personal property (for which it has title and/or risk of loss), as well as real and personal property which becomes a final part of the Project, during its off-Project status, in transit and while stored or worked upon away from, or on, the Project site. All policy proceeds shall be used for the repair or replacement of the property damaged or destroyed.

Property Waiver of Subrogation: General Contractor and Subcontractors hereby waives all rights of recovery against Owner including its subsidiaries, partners, partnerships, affiliated companies, successors and assigns, with respect to any loss or damage, including consequential loss or damage, to the property caused or occasioned by any peril or perils covered under any policy or policies of property insurance carried by the Subcontractor. General Contractor and Sub contractors shall cause its insurance carriers to consent to such waiver of subrogation.

**5. Other Requirements:**

- a) All policies must afford an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation or non-renewal, and ten (10) days notice of cancellation for non-payment of premium.
- b) All policies must be written by insurance companies whose rating in the most recent Best’s Rating Guide is not less than A (-): VII.
- c) Certificates of Insurance with the required endorsements evidencing the required coverages must be delivered to the Company prior to commencement of any work under this contract. Such certificates of insurance shall state "All Operations" performed on behalf of Company shall be covered by such insurance. A 30-day notice of cancellation must be issued per the terms/provisions under the General Contractor and Subcontractor’s policy(ies).
- d) If the GC or Subcontractor fails to secure and maintain the required insurance, Company shall have the right (without any obligation to do so, however) to secure same in the name and for the account of GC or Subcontractor in which event the GC or Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith.
- e) General Contractor reserves the right, but shall have no obligation, to procure the insurance, or any portion thereof, for which Subcontractor is herein responsible and which is described in this section. General Contractor shall notify Subcontractor if GC exercises its right, whereupon Subcontractor’s responsibility to carry such insurance shall cease and all the premiums and other charges associated with such insurance shall be refunded to the General Contractor. General Contractor further reserves the right at any time, with thirty (30) days written notice to Subcontractor, to require that Subcontractor resume the procurement and maintenance of any insurance for which General Contractor has elected to procure pursuant to this subsection; in such event, the sums paid to Subcontractor by General Contractor shall increase to the extent of any previously agreed and implemented reduction (as noted above) attributable to General Contractor’s prior assumption of the particular insurance coverages. Such refund shall be equitably pro-rated based upon Subcontractor’s completed work at the time of such adjustment.
- f) General Contractor reserves the right, in its sole discretion, to require higher limits of liability coverage if, in General Contractor’s opinion, operations by or on behalf of Subcontractor create higher than normal hazards, and, to require Subcontractor to name additional parties in interest to be Additional Insureds, and included in any required Waiver of Subrogation, Notice of Cancellation, or other endorsement.
- g) In the event that rental of equipment is undertaken to complete and/or perform the work, GC and Subcontractor agrees that it shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use, including use by unauthorized persons.

- h) Nothing in this Exhibit shall reduce GC or Subcontractor's obligations under this Contract. GC and Subcontractor's procurement and/or maintenance of insurance shall not be construed as a limitation of liability or as full performance of the indemnification and hold harmless provisions of this Agreement.
- i) In the event that materials or any other type of personal property ("personal property") is acquired for the Project or delivered to the Project site, GC agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, vandalism, and use, including use by unauthorized persons.

**6. Changes and Modifications:**

Any modification or waiver of the insurance requirements to this Agreement, or in any addendum hereto, may only be made with the prior written consent of Contractor.

**7. Notices:**

All Certificates of Insurance and required endorsements must be addressed and forwarded to:

With a copy to:  
Sunbrook Development, LLC  
6330 E. 75th St., Suite #156  
Indianapolis, IN 46250