

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025, between Heritage Village of Palm Beach Lakes Homeowners Association, Inc., a Florida corporation not-for-profit, (hereinafter referred to as "Association"), having its principal office at 11621 Kew Gardens Avenue, Palm Beach Gardens, Florida 33410 and O.C.T A Common Law Trust (License CGC # 1504853) (hereinafter referred to as "Contractor"), having its principal office 144 Anchorage Drive South, North Palm Beach, FL 33408, for the concrete restoration, waterproofing, application of balcony floor coverings/coatings, painting and related work (the "Project") at Heritage Village of Palm Beach Lakes Homeowners Association (hereinafter referred to as the "Property"), in accordance with the Contract Documents, hereinafter defined.

**WHEREAS**, Contractor is interested in providing the following services.

**WHEREAS**, the Association is interested in engaging Contractor to provide the following services; and

## **W I T N E S S E T H**

That the Association and Contractor for the consideration hereinafter named, agree as follows:

### **ARTICLE 1**

#### **THE CONTRACT DOCUMENTS**

1.1 In addition to this Agreement, the following documents shall comprise the contract documents ("Contract Documents"):

- A) Contractor's Bid dated \_\_\_\_\_ for Balcony Restoration Project consisting of \_\_\_\_\_ (\_\_) pages attached hereto and incorporated herein as Exhibit "A".
- B) Drawings prepared by Chalaire and Associates, Inc., consisting of \_\_\_\_\_ (\_\_) pages attached hereto and incorporated herein as Exhibit "B".
- C) Contractor's Certificates of Insurance attached hereto and incorporated herein as Exhibit "C".
- D) Contractor's License attached hereto and incorporated herein as Exhibit "D".
- C) Any written interpretations and modifications of the Contract Documents to be made from time to time by the Association's Representative, as hereinafter defined.

1.2 All of the Contract Documents including any not attached hereto are hereby Incorporated by reference and shall be deemed to be of the same force and effect as if actually attached hereto.

1.3 The manufacturers of any products utilized in connection with the performance of the Work shall hereinafter be referred to as the "Manufacturers" and the warranties to be issued by the Manufacturers shall hereinafter be referred to as the "Manufacturers' Warranties").

1.4 The Contract Documents shall be interpreted together and in harmony with one another. However, in the case of conflict between this Agreement and the other Contract Documents, this Agreement shall control. The Contractor must call any such conflict or discrepancy to the Association's attention, in writing, prior to

executing this Agreement. In the case of any conflict between the Contract Documents regarding the obligations or responsibilities of Contractor, whichever document imposes the greater obligation on the Contractor shall be controlling.

## **ARTICLE 2**

### **SCOPE OF WORK**

The Contractor shall provide all materials, supervision, labor, tools, permits, **bonds** and equipment, necessary to complete the work in strict accordance with the Contract Documents, and perform all work that is reasonably inferable therefrom as being necessary to accomplish the intent of the Contract Documents, and as required by all applicable laws, ordinances and rules and regulations of any governing authority including but not limited to the provisions of the Florida Building Code, and any amendments thereto and all Manufacturers' Specifications, if any. The work to be performed shall hereinafter be referred to as the "Work".

## **ARTICLE 3**

### **TIME OF COMMENCEMENT AND COMPLETION**

The Work shall be commenced within ten (10) business days after receipt of the permit ("Commencement Date") and shall be completed within two hundred seventy **(270) (395)** business days from the Commencement Date subject to any authorized extensions of time as set forth in Article 10 of this Agreement. All Work shall be performed in an expeditious manner.

## **ARTICLE 4**

### **CONTRACT SUM**

The Association shall pay Contractor for the performance of the Work the lump sum of **One Million Five Hundred Twenty-Seven Thousand Eight Hundred and 00/100 Dollars (\$1,527,800.00)** (the "Contract Sum"). The Contract Sum is inclusive of all costs, materials, labor, taxes, permits, warranties, licenses, fees, equipment, overhead and profit. The Contractor shall be responsible to obtain all permits necessary for the Work. **The permit fee shall be paid to the contractor as outlined in the Bid sheet. Should the original contract price increase, There shall be an additional charge of 4% per Dollar overage to cover the additional general condition costs such as scaffolding-dumpsters-port o let-fuel-ETC.**

## **ARTICLE 5**

### **PAYMENTS**

5.1 A Notice of Commencement shall be duly completed and recorded by the Association in accordance with Section 713.13, Florida Statutes and a certified copy posted prominently upon the Property. Payments shall be made in accordance with this Article 5 and Article 6 of this Agreement.

5.2 Progress Payments: Every thirty (30) days after commencement of the Work, the Contractor shall submit an Application for Payment to the Association's Representative using AIA Document G702 and G703. Payments shall be made for items comprising the Lump Sum Work based upon the percentage of the work actually and satisfactorily performed as certified by the Association's Representative in conformance with Article 4. In addition, for any approved Unit Price Work, the sums set forth on the Application for Payment shall be based upon the product of the unit prices specified on Exhibit "A" and the measured extent of work actually and satisfactorily performed in respect to each applicable unit price item. As a condition to payment of each draw and final payment, Contractor shall submit with each Application for Payment a sworn and certified progress payment affidavit which recites that all laborers, material suppliers and subcontractors dealing with the Contractor have been paid in full up through the date of the affidavit and partial releases of lien from Contractor and any lienors

serving a Notice to Owner to Association prior to payment and evidence of proof of payment of any indebtedness incurred with respect to the Work of Contractor, as may be required by Association and evidence that all Work has been performed as required pursuant to the Contract Documents up to the time of the request for payment. In addition, as Contractor is fully responsible for meeting the requirements of the Manufacturers' Warranties, Contractor shall be responsible for obtaining inspections or other acceptable documentation from the Manufacturers' representatives and delivering, together with its Applications for Payment and supporting documentation, signed statements from the Manufacturers verifying that the Manufacturers will issue the Manufacturers' Warranties for the Work performed for which payment is being made, as a condition of payment. The Association's Representative shall review and respond to each Application for Payment within five (5) days after Contractor has submitted its Application for Payment. When fully satisfied with the documentation submitted, the Association's Representative shall issue a certificate of authorization of payment to the Association within ten (10) days of approval of the Application for Payment for the amount approved less ten percent (10%) retainage. The Association shall issue payment of the amount certified by the Association's Representative, less retention, to Contractor within fifteen (15) days of receipt of the certificate of authorization of payment. Separately, final release of retainage is also subject to Contractor's compliance with all requirements for the issuance of final payment set forth in Article 6 of this Agreement. **Any payments not received as per the contract shall start to accrue interest at a rate of 2% per month or any part of on day 16.**

5.3 The Association may, in its discretion, make all or any portion of any progress payment by check payable jointly to the order of Contractor and any lienor giving timely notice, or may make such payment directly to such lienor and deduct said sum from the balance then due Contractor. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor.

5.4 Payments may be withheld on account of and only to the extent necessary to cover (1) defective Work not remedied, (2) claims or liens filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (4) failure to provide waivers of lien for all lienors giving notices, (5) damage to the Association's property or to the real or personal property of any unit owners or tenants in which case a reasonable estimated amount of such damages shall be withheld from Contractor's payment until such damages are satisfactorily corrected, (6) failure of the Work to progress satisfactorily or according to schedule, or (7) failure to carry out the Work in accordance with the Contract Documents. Withheld payments shall be released upon cure of the reason for withholding.

5.5 No payments made under this Agreement shall be evidence of performance of this Agreement, either wholly or in part, and no payment including final payment shall be construed to be an acceptance of defective Work or improper materials, nor shall use of the Work by the Association constitute acceptance of the Work hereunder or any part thereof.

## **ARTICLE 6**

### **FINAL PAYMENT**

6.1 Final payment in the amount of Contractor's final application for payment including all outstanding retainage shall be due within thirty (30) days from completion of the Work including all punch list items and delivery of the fully executed Manufacturer's Warranties provided the Work, including all final punch list items, has been fully performed and inspected and accepted by the Association's Representative, the Manufacturers' Representatives and any governmental authorities required to inspect the Work and all permits have been closed. **Since the City Of west Palm Beach requires each building to have a separate permit. The Retainage invoice shall be paid as each building is completed.** **The OWNERS Representataive shall give the Association an email notice that they have received the retainage invoice from the Contractor. The association shall have 10 days to object to approval of the payment. Should no objection be made, the invoice shall be processed by the OWNERS Rep.**

6.2 Final payment shall not be due until the Contractor has delivered to the Association a complete release of all liens and releases or waivers of lien from all lienors who have served a notice to owner to Association arising out of this Agreement, and a final contractor's affidavit pursuant to Section 713.06(2), Florida Statutes.

6.3 Final payment may be withheld on account of and only to the extent necessary to cover (1) defective Work not remedied, (2) claims or liens filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (4) failure to provide waivers of lien for all lienors giving notices, (5) damage to the Association's property, or to the real or personal property of any unit owners or tenants in which case a reasonable estimated amount of such damages shall be withheld from Contractor's payment until such damages are satisfactorily corrected; (6) failure of the Contractor to comply with paragraph 6.1 or 6.2 of this Agreement, or (7) failure to carry out the Work in accordance with the Contract Documents. Withheld payments shall be released upon cure of the reason for withholding.

6.4 The Association may, in its discretion, make all or any portion of any of the final payment by check payable jointly to the order of Contractor and any lienor giving timely notice, or may make such payment directly to such lienor and deduct said payment from the sum due Contractor. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor. In the event there are claims which exceed the final payment amount, no payment shall be made until Contractor deposits the amount of any such deficiency with the Association.

6.5 The making of final payment shall not constitute a waiver of any claims by the Association.

#### **ARTICLE 7** **ASSOCIATION'S REPRESENTATIVE**

7.1 Donald Chalaire, P.E. of Chalaire and Associates, Inc., or such other individual designated by the Association shall be the Association's Representative during performance of the Work and until issuance of the final Certificate for Payment and completion of all punch list items and shall hereinafter be referred to throughout the Contract Documents as the "Association's Representative".

7.2 The Association's Representative shall at all times have access to the Work.

7.3 The Association's Representative shall perform all duties referenced in the Contract Documents, and in addition shall make periodic visits to the site to familiarize himself with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents.

7.4 Based upon the Association's Representative's inspections, the Association's Representative will determine the amount owing to the Contractor and will issue certificates authorizing payment in accordance with Article 5 and Article 6 of this Agreement. No issuance of a payment shall constitute an acceptance of any Work not in accordance with the Contract Documents.

7.5 The Association's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents. He will make decisions on all claims and disputes between the Association and the Contractor. His decision as it relates to the following items shall be final: interpretation and requirements of the Contract Documents, conformance of Contractor's Work with the Contract Documents, all matters relating to artistic effect of the Work, and minor changes in the Work.

7.6 The Association's Representative will have authority to reject Work which does not conform to the Contract Documents. In such event Contractor shall have five (5) business days from receipt of written notice to commence to correct and to diligently proceed to complete such Work to the reasonable satisfaction of the Association's Representative.

**ARTICLE 8**  
**CONTRACTOR**

8.1 Contractor represents that it is a properly qualified and licensed contractor in good standing with the State of Florida and is a corporation in good standing, organized and existing under the laws of the State of Florida. Prior to commencement of the Work, Contractor shall provide the Association with copies of the above current licenses. Contractor further represents it has read, examined and understands the pertinent Contract Documents and is well qualified and able to perform the Work; has a sufficient number of qualified persons to assure timely performance of the Work; has the proper tools and equipment to perform the Work; and is financially capable of performing this Agreement.

8.2 Contractor warrants and represents to the Association that it has visited the site of the Work, visually examined the actual job conditions and that Contractor is familiar with local conditions and all things required that will have a bearing on performance of Contractor's work and Contractor's costs, including but not limited to traffic maintenance, disposal, handling and storage of the materials, access and restrictions to the units, access roads to the site, the visible conditions of the work area, and the character of the Work. Failure on the part of Contractor to completely or properly evaluate any factors of costs prior to signing this Agreement shall not form a basis for additional compensation. Execution of this Agreement shall be conclusive evidence that Contractor has visually investigated and is satisfied as to the visible site conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished, and as to the requirements of the Contract Documents. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Association before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Association's Representative will promptly investigate such conditions and, if the Association's Representative determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Association's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Agreement is justified, then the Contractor shall proceed with the Work without adjustment to the Contract Time or Contract Sum.

8.3 The Contractor shall supervise and direct the Work using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement. All Work shall be performed by craftsmen skilled in the trades and application of materials involved.

8.4 The Contractor shall provide all **bonds** and provide and pay for all licenses, labor, materials, equipment, tools, construction, equipment, machinery, transportation, other facilities and services necessary for the proper execution and completion of the Work. The Association shall supply water, electrical outlets and current to run equipment necessary to perform the Work. The Contractor shall supply its own sanitary facilities and, if necessary, a trailer to store a reasonable supply of materials and equipment. Contractor shall be responsible to fully insure all materials and equipment on the Property. In no event shall Association be liable or responsible for any damages to such materials or equipment, including but not limited to any damages arising from theft or vandalism of such materials or equipment.

8.5 The Contractor shall at all times enforce strict discipline and good order among its employees, and shall not employ any unfit person or anyone not skilled in the task assigned to him.

8.6 The Contractor warrants to the Association and the Association's Representative that all materials incorporated in the Work will be new, and that all Work and materials will be of first and highest grade and quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. Contractor shall not substitute any materials for those materials specified by the Contract Documents without the prior written consent of the Association and the Association's Representative.

8.7 The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure and pay for all **bonds** and licenses necessary for the execution of the Work.

8.8 The Contractor shall give all notices, and warrants and represents that the Work when completed will comply with all laws, ordinances, rules, regulations, and orders of any public authority, including but not limited to the Florida Building Code and all amendments thereto, and all other authorities having jurisdiction over the Work and Property. Contractor acknowledges that the Association does not have the knowledge to determine compliance with the foregoing items and is relying on the Contractor's knowledge and expertise of same. Contractor shall be liable for any deviation from any laws, ordinances, rules, regulations, and orders of any public authority even if in strict compliance with the Contract Documents. Contractor shall bear sole responsibility for and bear all costs necessary to insure full compliance with the representations contained herein, including, but not limited to those set forth in paragraph 8.2., the cost of removing existing work, the cost of replacing any work with work conforming to the applicable requirements and any attorney's fees or other expenses incurred by Association in responding to any complaints, citations, court orders, administrative orders or similar governmental edicts or process. Contractor shall be responsible for complying with laws, regulations, codes and ordinances in connection with the performance of the Work. However, Contractor shall be entitled to any actual increased costs for compliance with laws, regulations, codes and ordinances. which are contrary to what is shown on the plans and specifications unless Contractor knew or should have known in its capacity as an experienced general contractor of any inconsistency between the plans and specifications and .any laws, ordinances, rules, regulations, and orders of any public authority, including but not limited to the Florida Building Code and all amendments thereto. The provisions of this paragraph shall survive the termination of this Agreement.

8.9 The Contractor shall be responsible for the acts and omissions of all its employees and all subcontractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor. All such individuals shall be properly trained and shall wear identifying uniforms at all times while on the Property.

8.10 The Contractor at all times shall keep the Property free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work Contractor shall remove, at its sole cost and expense, all its waste materials and rubbish from and about the Property as well as its tools and equipment, shall clean all surfaces, and shall leave the Work as per existing condition or its equivalent, except as otherwise specified. Contractor agrees to immediately repair at its sole cost and expense all damages to the Property, including any damages to real or personal property of unit owners or tenants, arising from or relating to Contractor's performance of the Work to the reasonable satisfaction of the Association. Contractor shall not be responsible for damages to lawns or landscaping caused by the Work. **The contractor shall bear NO responsibility for any damage to items left in the work areas once the Contractor has given a 48 hour notice to have any such items removed to access the work areas.**

8.11 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Association, its officers, directors, agents and employees and the Association's Representative (the "Indemnified Parties") from liability, damages, losses and costs, including, but not limited to, reasonable attorney's fees, at both the trial and appellate level, caused in whole or in part by any act, omission or default of the Contractor, any of the Contractor's subcontractors, sub-subcontractors, materialmen or agents or any tier of their respective employees arising from this Agreement or its performance. However, such indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the

Indemnified Parties or for statutory violations or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Contractor or any of the Contractor's subcontractors, sub-subcontractors, materialmen or agents or any tier of their respective employees. To the extent that the Contractor's obligation to indemnify as set forth herein arises in whole or in part by the acts, omissions, or defaults of the Indemnified Parties, such obligation shall be limited to Five Million Dollars **(\$5,000,000.00)** (Please explain how this dollar figure was reached) per occurrence which sum the parties hereto acknowledge bears a reasonable commercial relationship to this Agreement and shall be deemed part of the Project specifications and bid documents. In any and all claims against the Indemnified Parties by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 8.11 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Worker's compensation acts, disability benefit acts or other employee benefit acts. The provisions of this paragraph shall survive termination of this Agreement.

8.12 The Contractor shall coordinate and provide the schedules in a manner to complete the Project in the most expeditious and economical manner possible. The Contractor shall be responsible for the finish of the Work and shall not commence any part of it until surfaces are in proper condition to receive specified systems and/or products.

8.13 Contractor shall be fully responsible for arranging any inspections required by the Manufacturers' representatives in order to insure that the Manufacturers' Warranties will be issued to the Association.

8.14 Contractor shall provide the Association's manager with sufficient notice of scheduling of the Work in order to assist the Association in coordinating notification to residents.

## **ARTICLE 9**

### **SUBCONTRACTS**

Contractor may subcontract portions of the Work contemplated under this Agreement upon submission and written approval of the Association of its proposed subcontractor. Contractor hereby assigns to Association all its contract rights with respect to subcontractors and material and equipment suppliers that provided work, materials and equipment to this Project in accordance with the Contract Documents, including but not limited to all Contractor's rights to make claims regarding quality of the work, merchantability of the materials and equipment, feasibility and fitness for the particular purpose of materials, equipment and workmanship described in this Agreement. It is further agreed that all subcontracts and material and equipment purchase contracts entered into by Contractor or its subcontractors or material suppliers, shall contain a provision stating that the Association may bring claim directly against any subcontractor of Contractor for breach of Contract, warranty rights, quality of workmanship, merchantability of equipment, feasibility and fitness for the particular purpose of materials and equipment and workmanship, and create third party beneficiary rights of Association in said agreements. It is further agreed and understood that such assignment(s) is part of the consideration to Association for entering into this Agreement with Contractor and may not be withdrawn. Additionally, nothing contained in this Agreement shall constitute an assignment of Contractor's rights against Association or create any third party beneficiary rights in any subcontractors or material and equipment suppliers of Contractor. The purpose of this provision is to allow the Association, in addition to Contractor, to make claim for damages or indemnification against any subcontractors or material and equipment suppliers that may be ultimately responsible for breach of this Agreement, defects or deficiencies in the Work or materials and equipment. The assignment(s) referred to herein shall only take effect when the Association elects to take such assignment(s).

## **ARTICLE 10**

### **TIME**

10.1 All time limits stated in the Contract Documents are of the essence in this Agreement.

10.2 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Schedule and shall promptly advise the Association and the Association's Representative of any delays or potential delays. The Schedule shall be updated one time each month to reflect actual conditions and Contractor shall provide the Association and the Association's Representative with a copy of the Schedule and a list of any changes made to the Schedule. In the event any progress report or Schedule updates indicate any delays, the Contractor shall propose an affirmative plan to correct the delay, including re-sequencing of the Work, overtime and/or additional labor, if necessary. In no event shall any progress report or Schedule updates constitute an adjustment in the contract time, milestone dates, or the Contract Sum unless any such adjustment is agreed to by the Association and the Association's Representative and authorized pursuant to written Change Order. Contractor shall maintain such Schedule on a current basis in accordance with the provisions of this Section and shall keep proper records available for inspection by the Association and the Association's Representative to substantiate actual activity, duration and completion dates.

10.3 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by weather, labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause which Association's Representative may determine justifies the delay, then the Contract Time shall be extended by written change order for such reasonable time as the Association's Representative may determine. All requests for extensions of time other than those associated with changes in the Work, must be submitted in writing to the Association representative within ten (10) business days of the event giving rise to the delay. Failure to so request an extension will constitute a waiver of any right for an extension of time.

10.4 In the event that Contractor is delayed in the progress of the Work and is granted an extension of time in which to perform the Work, in no instance will Contractor be entitled to increased costs, compensation or damages as a result of delay. All damages that may occur by reason of delay are hereby waived by the Contractor.

10.5 The parties agree that time is of the essence in the performance of this Agreement. **Substantial** Completion of the Work under this Agreement as certified by the Association's Representative shall be no more than two hundred seventy (270) **(365)** business days from the date of commencement of this Agreement as specified in Article 3 subject to any authorized extensions of time as indicated by a written change order pursuant to paragraph 10.2 of this Article 10. In the event the Work is not **Substantially** completed within two hundred seventy **(270)** **(365 )** business days from the date of commencement of this Agreement and has not been extended by change order, the Association shall be entitled to collect liquidated damages. Contractor and Association agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the impossibility of determining these damages, the sum of One Thousand and 00/100 Dollars (\$1,000.00) for each calendar day shall be assessed for each calendar day of delay in completion of the Work as liquidated damages. It is hereby agreed that the amount of the per diem assessment is not a penalty and not excessive in light of the circumstances known to the parties at the time this Contract is executed. This provision for liquidated damages for delay shall not affect the Association's right to terminate this Agreement as provided in Article 17. The Association's exercise of its right to terminate this Agreement shall not release the Contractor from its obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the Association or, at the Association's option may be deducted from future payments that may be due and owing to Contractor.

**10.6 The parties agree that time is of the essence in the performance of this Agreement. The parties agree it would benefit the Association to complete the work as quickly as possible. Should the Contractor achieve Substantial Completion of the contracted work before the 365 business days from the date of the owners Representatives commencement letter, The Contractor shall receive a bonus of \$1,000 for each calendar day the Contractor achieves Substantial Completion.**



**10.7 The parties agree that time is of the essence in the performance of this Agreement. Should the actual quantities increase, the Contractor shall receive 1 extra business day to complete the work per every \$1,500 increase in the original contract. No written change order is needed if the additional work is listed as a line item in the Contractor's bid sheet.**

## **ARTICLE 11**

### **PROTECTION OF PERSONS AND PROPERTY**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and workers, residents, guests and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. Contractor shall comply with all OSHA regulations regarding job safety and all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor at its sole cost and expense.

## **ARTICLE 12**

### **CONTRACTOR'S INSURANCE**

The Contractor shall purchase and maintain such insurance as will protect Contractor and the Association from claims under Worker's Compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death and from claims for damages to property which may arise out of or result from the Contractor's operations under this Agreement, whether such operations be by itself or by any subcontractor or anyone directly or indirectly employed by any of them. The Contractor shall purchase and maintain insurance coverage with limits of not less than specified in the Certificates of Insurance attached hereto as Exhibit "C".

The Association shall be named as an additional insured on all policies required to be maintained hereunder with the exception of the Worker's Compensation insurance, with a waiver of subrogation on all policies required to be maintained hereunder. The Contractor shall submit to the Association the additional insured endorsement to the policies reflecting same. The Contractor's policies, including the general liability policy, must provide additional insured coverage on a primary noncontributory basis. As a condition precedent to entitlement to payment, Contractor must maintain the above-described coverage and upon request by the Association furnish a copy of all policies to the Association. Certificates of Insurance shall be delivered to the Association prior to the commencement of the Work, and said certificates shall contain a provision that coverage afforded under the policies will not be canceled without thirty (30) days prior written notice to the Association. In the event Contractor should fail to pay the insurance premiums, the Association, at its option, may pay the premiums and deduct said amount from the Contract Sum.

## **ARTICLE 13**

### **CORRECTION OF WORK AND WARRANTY**

**13.1** The Contractor shall, within five (5) calendar days of written notice from **Association, (Owners Representative)** commence and diligently and continuously proceed to correct any work that fails to conform to the requirements of the Contract Documents and unconditionally guarantees and warrants that it shall correct any defects due to faulty materials, equipment and/or workmanship which appear within a period of five (5) years from the date of final payment. The provisions of this Article 13 apply to work done by subcontractors as well as to work done by the Contractor. In addition, Contractor is fully responsible for obtaining for the Association the Manufacturers' Warranties. Notwithstanding anything set forth in the Manufacturers' Warranties to the contrary, those items specifically covered by the Manufacturers' Warranties and any disclaimers and limitations on liability

shall in no way be deemed to limit Contractor's warranty and liability herein and are in addition to and not in lieu of the Contractor's warranty. This warranty is not in lieu of but is in addition to any other warranties, express or implied, which may be provided by law.

13.2 The Contractor shall bear all costs of correcting such defective work. This obligation shall survive termination of this Agreement. If Contractor should default in the performance of any of its warranty obligations, it shall be responsible for all damages, fees or costs incurred by the Association in enforcing the provisions of this Article, including, but not limited to, all attorney's fees, engineering and consulting fees or other expenses incurred. Without limiting the generality of the foregoing, if any warranty repairs are not performed within the specified time, emergency repairs performed by others shall not void the warranty and the Contractor shall reimburse the Association for all costs incurred in connection with the performance of such repairs.

13.3 Nothing contained in this Article 13 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents or law. The establishment of the time period set forth in paragraph 13.1 above relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations and any damages caused by the Contractor including but not limited to any action commenced by the Association for negligence, strict liability, breach of contract or warranties.

#### **ARTICLE 14** **CHANGES IN THE WORK**

Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order or Construction Change Directive, subject to the limitations stated in this Article 14 and elsewhere in the Contract Documents. Any changes in the Work or any adjustment in the Contract Sum or the Contract Time shall only be made upon written Change Order or Construction Change Directive as provided herein. If Contractor proceeds with such work without obtaining a written change order or Construction Change Directive, it shall be assumed that Contractor has performed such work at no additional charge. The requirement for a change to be in writing and signed by the Association, under this Article cannot be waived. A Change Order shall be based upon agreement among the Association's Representative, the Association and Contractor and a Construction Change Directive requires directive signed by the Association's Representative and the Association and may or may not be agreed to by the Contractor. Among other circumstances, a Construction Change Directive may be issued where the Contractor believes it is entitled to a Change Order or otherwise to an increase in the Contract Sum or Contract Time, but the Association does not agree. In such event, the Contractor is obligated to perform the Work described in the Construction Change Directive in accordance with this Article. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

##### **14.1 Change Orders**

14.1.1 A Change Order is a written instrument signed by the Association's Representative, the Association and Contractor stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, to the Contract Sum; and
- .3 The amount of the adjustment, if any, to the Contract Time.

##### **14.2 Construction Change Directives**

14.2.1 A Construction Change Directive is a written order signed by the Association's Representative and the Association directing a change or other work be performed by Contractor prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Association may by Construction Change Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

14.2.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

14.2.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 14.2.6.

14.2.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the work involved and advise the Association's Representative of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. Disagreement as to the adjustment to the Contract Sum or Contract Time shall not excuse Contractor from its prompt performance of the work described in the Construction Change Directive.

14.2.5 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

14.2.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Association's Representative shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, the Contractor shall keep and present, in such form as the Association's Representative may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 14.2.6 shall be limited to the following:

- .1 Costs of labor including workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

14.2.7 Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Association's Representative will make an interim determination for purposes of monthly certification for payment for those costs and approve for payment the amount that the Association's Representative determines, in the Association's Representative's sole judgment, to be reasonably justified. The Association's Representative's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim.

## **ARTICLE 15**

### **SHOP DRAWINGS**

15.1 The Contractor shall review, approve and submit to the Association for review and approval by the Association's Representative, drawings, product data, samples and similar submittals, with reasonable promptness and in such sequence as to cause no delay in the Work.

15.2 By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that he has determined and verified materials, estimated field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

15.3 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Association's Representative's approval of shop drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Association's Representative in writing of such deviation at the time of submittal and the Association's Representative has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Association's Representative's approval thereof.

15.4 The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved by the Association's Representative. Such Work shall be in accordance with approved submittals.

## **ARTICLE 16**

### **TERMINATION BY THE CONTRACTOR**

If the Association's Representative fails to issue a Certificate of Payment for a payment lawfully and properly due to the Contractor for a period of ten (10) days through no fault of the Contractor, or if the Association fails to make payment due thereon for a period of twenty (20) days, the Contractor may, after seven (7) days written notice to the Association and the Association's Representative, terminate this Agreement and recover from the Association payment for actual expenditures for labor, materials, subcontractors, equipment and reasonable profit thereon not to exceed ten (10%) percent, but which sum shall never exceed the Contract Sum. This sum shall be Contractor's sole remedy under this Agreement.

## **ARTICLE 17**

### **TERMINATION BY THE ASSOCIATION**

17.1 If the Contractor does not, cannot or is rendered unable to satisfy the conditions and obligations imposed by the Contract Documents, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases

for which an extension of time is granted, to supply properly skilled Workmen, or proper materials in accordance with the Contract Documents, or if it fails to make prompt payment to subcontractors or for materials or labor, or disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of any provision of the Contract Documents, then the Association, upon certification by the Association's Representative that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor seven (7) days written notice and upon Contractor's failure to cure the default and diligently and continuously pursue the correction of the default within the seven (7) day period, take possession of the site and finish the Work by whatever method the Association deems expedient, and/or terminate this Agreement. In such case, if applicable, the Contractor shall not be entitled to receive any further payment until the Work is finished. This provision shall in no way limit the Association's right to claims for any additional damages, including but not limited to, liquidated damages.

17.2 If the unpaid balance of the Contract Sum exceeds the cost of completing and correcting the Work, including compensation for the Association Representative's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Association. This provision shall in no way limit Association's right to claims for any and all additional damages. This obligation for payment shall survive termination of this Agreement.

17.3 The Association may also terminate this Agreement for the Association's convenience and without cause upon 72 hours' written notice to Contractor. If the Contractor is terminated for convenience, the Contractor shall be paid for all Work completed through the date of termination, less payments made and any amounts that the Association is entitled to withhold pursuant to the terms of this Agreement and by law. **As well as 20% of the remaining cost to complete the contract.** The Contractor waives any and all claims for damages resulting from such termination for convenience, including without limitation anticipated profits and any and all damages.

#### **ARTICLE 18**

#### **TRANSFER OF LIEN**

In the event any liens should be filed against the Property by any subcontractors or material suppliers, in connection with labor or services performed, the materials incorporated into or delivered to the Property, Contractor shall indemnify and hold Association harmless against all such liens and suits or other proceedings pertaining thereto including any and all costs and attorneys' fees, at both the trial and appellate level. If any such liens are filed then Contractor must transfer such lien within five (5) days of the filing of the lien by, (A) depositing in the office of the Clerk of the Circuit Court an amount sufficient to transfer said lien, or (B) by filing with the Clerk's office a bond executed by a surety licensed to do business in the State of Florida in accordance with the provisions of Section 713.24, Florida Statutes, and its successors. Should Contractor fail to transfer such lien, the Association may, at its option, do so and deduct the amount expended, including all costs and attorney's fees incurred from any payment then due Contractor.

#### **ARTICLE 19**

#### **BOND**

If required by the Association, the Payment Bond shall be modified to include the following language:

"The provisions and limitations of Section 713.23, Florida Statutes are incorporated in this payment bond by reference. It is hereby amended such that all provisions and limitations, including conditions, notices and time limitations of Section 713.23, Florida Statutes are incorporated herein by reference. This payment bond is intended to be a statutory bond, not a common law bond."

#### **ARTICLE 20**

#### **PRE-CONSTRUCTION INSPECTIONS**

The Contractor, the Association and the Association's Representative shall meet prior to commencement of the Work to perform a pre-construction inspection of the work areas to document any pre-existing damages. The inspection report will note in photographs, videotape and written form the existing condition of all work areas including adjacent property. The inspection report including all photographs and videotapes will be prepared by Contractor at its sole cost and expense. A copy of the final inspection report including all photographs and videotapes shall be forwarded to the Association's Representative as a permanent record.

**ARTICLE 21**  
**ATTORNEY'S FEES**

In connection with any litigation including appellate proceedings arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

**ARTICLE 22**  
**GOVERNING LAW AND VENUE**

The Contract Documents shall be construed under and in accordance with the laws of the State of Florida. Any legal proceeding arising from the Contract Documents shall be brought only in a court of competent jurisdiction in Palm Beach County, Florida.

**ARTICLE 23**  
**SUCCESSORS AND ASSIGNS**

The Association and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to this Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the Association.

**ARTICLE 24**  
**MODIFICATION**

No change or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

**ARTICLE 25**  
**RIGHTS AND REMEDIES**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**ARTICLE 26**  
**SEVERABILITY AND WAIVER**

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

**ARTICLE 27**  
**WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the Contractor or the Association, or shall be deemed to have been duly given on the date said notice was mailed by United States Certified Mail, Return Receipt Requested, postage prepaid. All notices to the Association shall be copied to the Association's Representative. All written notices shall be addressed as follows (or to such other address as any party may specify by notice to all other parties as aforesaid):

For Association:  
Heritage Village of Palm Beach Lakes  
Homeowners Association, Inc.  
c/o FirstService Residential  
11621 Kew Gardens Avenue, Suite 200  
Palm Beach Gardens, FL 33410  
Attn: Alina Farinas, Manager

For Contractor:  
**O.C.T A Common Law Trust**  
**144 Anchorage Drive South**  
**North Palm Beach FL. 33408**  
**Attn: Pandelis Damigos**

For Association's Representative:  
Donald Chalaire, PE.  
Chalaire and Associates, Inc.  
721 US Highway #1, Suite 212  
North Palm Beach, FL 33408

**ARTICLE 28**  
**COUNTERPARTS**

This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument. It is agreed that a facsimile copy of the executed Agreement or an electronic pdf copy of the Agreement shall be enforceable as an original.

**ARTICLE 29**  
**FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND**

**PAYMENT MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:**

**CONSTRUCTION INDUSTRY LICENSING BOARD**  
**1940 North Monroe Street**

Tallahassee, Florida 32399  
Telephone (850) 487-1395

**ARTICLE 30**  
**CHAPTER 558 NOTICE OF CLAIM**

**The Association and Contractor have agreed that the requirements set forth in Chapter 558, Florida Statutes; do not apply to this Agreement.**

This Agreement is executed the day and year first above written.

**HERITAGE VILLAGE OF PALM BEACH LAKES  
HOMEOWNERS ASSOCIATION, INC.**

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

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

**O.C.T A COMMON LAW TRUST**

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

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