

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (this "Agreement") is entered into as of the ____ day of _____, 2009, by and among _____ ("Plaintiff"), _____ ("General Contractor") and _____ ("Subcontractor").

WHEREAS, Plaintiff is a condominium association acting on behalf of the residents of the _____ (the "Condominium"), a condominium complex located at _____ that consists _____;

WHEREAS, General Contractor and Subcontractor are party to that certain Subcontract Agreement dated _____ (the "Subcontract") pursuant to which Subcontractor was retained by General Contractor to _____;

WHEREAS, Plaintiff has filed a lawsuit against, among others, Subcontractor and General Contractor in the _____ which is currently identified as Case No. _____ (the "Lawsuit");

WHEREAS, Subcontractor and General Contractor deny all allegations made in the Lawsuit;

WHEREAS, in order to avoid the expense, burden and delay of litigation, and without admitting or acknowledging any liability, the parties to this Agreement now wish to affect a complete resolution and settlement of Plaintiff's claims against Subcontractor and the General Contractor related to Subcontractor's work on the Condominium under the Subcontract, including claims that have not been raised, and freely and voluntarily enter into this Agreement for that purpose;

NOW THEREFORE, in consideration of the covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Complete Resolution.** It is the intent of this Agreement to resolve, fully and forever, any and all claims of Plaintiff against Subcontractor and the General Contractor related to Subcontractor's work under the Subcontract, pursuant to the terms herein.
2. **Subcontractor's Work.** Subcontractor shall complete the work described on Exhibit A attached hereto and incorporated herein by this reference (the "Work"). Subcontractor shall commence the Work within fifteen (15) business days after execution of this Agreement. Subcontractor may use subcontractors to perform any or all of the Work. All Work shall be performed in accordance with the original contract documents including the drawings, addenda and specifications, unless otherwise expressly provided for herein. Within fifteen (15) business days following completion of the Work, Subcontractor and Plaintiff shall complete a walk-through to review the Work. Subcontractor shall immediately correct any items identified in the walk-through that do not comply with the requirements of this Agreement. Subcontractor shall warrant all parts and labor with respect to the Work for a period of one year from the date of completion of the Work; *provided*, however, that any problems or deficiencies related to inadequate maintenance or the environment will not be warranted.

3. Releases.

- a. Plaintiff, for itself and its successors and assigns, hereby releases, discharges and holds harmless the “Subcontractor Released Parties” (as defined below) from any and all known or unknown claims, complaints, grievances, liabilities, obligations, promises, agreements, damages, causes of action, rights, debts, demands, controversies, costs, losses and expenses whatsoever, existing now or in the future, under any municipal, local, state or federal law, common or statutory, related to, concerning, or arising, directly or indirectly, out of any injury, damage, loss or expense incurred in connection with the work completed by Subcontractor under the Subcontract, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuit. The term “Subcontractor Released Parties” shall mean Subcontractor and its current and former parents, subsidiaries, affiliated and related companies, partnerships and entities, their successors and assigns, and any current or former owners, shareholders, officers, directors, agents, representatives, and employees of Subcontractor or its current or former parents, subsidiaries, affiliated and related companies, partnerships and entities, and their guardians, successors, assigns, heirs, executors and administrators.
- b. Plaintiff, for itself and its successors and assigns, hereby releases, discharges and holds harmless the “General Contractor Released Parties” (as defined below) from any and all known or unknown claims, complaints, grievances, liabilities, obligations, promises, agreements, damages, causes of action, rights, debts, demands, controversies, costs, losses and expenses whatsoever, existing now or in the future, under any municipal, local, state or federal law, common or statutory, related to, concerning, or arising, directly or indirectly, out of any injury, damage, loss or expense incurred in connection with the work completed by Subcontractor under the Subcontract, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuit. The term “General Contractor Released Parties” shall mean General Contractor and its current and former parents, subsidiaries, affiliated and related companies, partnerships and entities, their successors and assigns, and any current or former owners, shareholders, officers, directors, agents, representatives, and employees of General Contractor or its current or former parents, subsidiaries, affiliated and related companies, partnerships and entities, and their guardians, successors, assigns, heirs, executors and administrators.
- c. General Contractor, for itself and its successors and assigns, hereby releases, discharges and holds harmless the Subcontractor Released Parties from any and all known or unknown claims, complaints, grievances, liabilities, obligations, promises, agreements, damages, causes of action, rights, debts, demands, controversies, costs, losses and expenses whatsoever, existing now or in the future, under any municipal, local, state or federal law, common or statutory, related to, concerning, or arising, directly or indirectly, out of any injury, damage, loss or expense incurred in connection with the work completed by Subcontractor under the Subcontract, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuit.

4. Covenants Not to Sue.

- a. Plaintiff hereby agrees not to commence or assist, directly or indirectly, with any lawsuit, action, claim (including a third-party claim), arbitration, regulatory action or other proceeding against any Subcontractor Released Party with respect to the work completed by Subcontractor under the Subcontract, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuit, except for a lawsuit or other action against Subcontractor for breach of this Agreement. This covenant not to sue is a material inducement, without which Subcontractor would not have entered into this Agreement.
 - b. Plaintiff hereby agrees not to commence or assist, directly or indirectly, with any lawsuit, action, claim (including a third-party claim), arbitration, regulatory action or other proceeding against any General Contractor Released Party with respect to the work completed by Subcontractor under the Subcontract, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuit, except for a lawsuit or other action against General Contractor for breach of this Agreement. Notwithstanding anything to the contrary herein, Plaintiff may continue to pursue any and all other claims against any General Contractor Released Party that are set forth in the Lawsuit or in any future lawsuit or other action, which claims are unrelated to Subcontractor's work under the Subcontract. This covenant not to sue is a material inducement, without which General Contractor would not have entered into this Agreement.
 - c. General Contractor hereby agrees not to commence or assist, directly or indirectly, with any lawsuit, action, claim (including a third-party claim), arbitration, regulatory action or other proceeding against any Subcontractor Released Party with respect to the work completed by Subcontractor under the Subcontract, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuit, except for a lawsuit or other action against Subcontractor for breach of this Agreement. This covenant not to sue is a material inducement, without which Subcontractor would not have entered into this Agreement.
5. **Amendment to Complaint.** Plaintiff will dismiss Subcontractor from the Lawsuit with prejudice within seven (7) days from the execution of this Agreement.
 6. **Indemnification.** Plaintiff agrees not to participate in, assist in the preparation of, or otherwise involve itself in any litigation brought by a third party against any Subcontractor Released Party or General Contractor Released Party with respect to the work completed by Subcontractor under the Subcontract, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuit. Plaintiff will indemnify and hold harmless Subcontractor and General Contractor from any and all lawsuits, claims, actions or other proceedings brought against Subcontractor or General Contractor by any third party with respect to the work completed by Subcontractor under the Subcontract, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuit.
 7. **Representations and Warranties.** Plaintiff, General Contractor and Subcontractor each represent and warrant that (i) it is not relying upon any statements (oral or written), understandings, representations, expectations or agreements other than those expressly set

forth in this Agreement, (ii) it has had the opportunity to be represented and advised by legal counsel in connection with this Agreement, (iii) this Agreement is being made voluntarily and of each party's own choice and not under coercion or duress, (iv) it has no expectation of that any of the other parties will disclose facts material to this Agreement, (v) it knowingly waives any and all rights to rescind or avoid this Agreement based upon presently existing facts, known or unknown, and (vi) it has the full power, authority and capacity to make the commitments contained in this Agreement. Plaintiff and General Contractor understand that it is giving up any and all claims against Subcontractor for damages that are currently known as well as any and all claims for damages that have not yet been discovered or that do not yet exist, but which may be discovered or arise in the future. The parties each agree and stipulate that the other parties are relying on these representations and warranties as a material inducement to enter into the Agreement. Plaintiff, General Contractor and Subcontractor each expressly waive any claim of fraud or fraudulent inducement with respect to this Agreement and agree that no party shall be deemed to be the drafter. These representations and warranties shall survive the execution of this Agreement indefinitely and without regard to the statute of limitations.

8. **Disclaimer of Liability.** By entering into this Agreement, the parties do not admit, and do not specifically deny, any violation of any local, state, or federal law, common or statutory. Neither the execution of this Agreement nor the consideration provided for herein shall constitute or be construed as an admission by any party of any fault, wrongdoing or liability, whatsoever, and the parties acknowledge that all such liability is expressly denied.
9. **Confidentiality.** The parties agree that the facts and the terms of this Agreement, the negotiation of this Agreement, and the facts underlying the Lawsuit will be kept strictly and completely confidential and shall not be disclosed in any way to any person except as may be required by law or compulsory process. A breach of this provision is a material breach of this Agreement. The parties agree that this paragraph is a material inducement to the entering into of this Agreement and that any party may seek a temporary restraining order to enforce this paragraph without posting a bond.
10. **Miscellaneous.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed herein and supersedes all prior and contemporaneous negotiations and agreements, oral or written, all of which are deemed incorporated and merged into this Agreement or abandoned. This Agreement cannot be assigned, amended, modified or terminated without the express written consent of all parties. No waiver of any breach or failure to enforce one or more of the terms and conditions hereof shall be construed as an implied amendment or agreement to modify or as a waiver of the right to later enforce such terms. If any provision of this Agreement is held invalid, then to the fullest extent permitted by law, such invalidity shall not affect the validity of any other provision of this Agreement. Each party shall bear its own attorneys' fees and costs. This Agreement shall be covered by and interpreted under the laws of the State of Florida. This Agreement shall be binding on, and shall inure to the benefit of, the parties, their heirs, successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall be binding and enforceable as an original, and electronic or facsimile signatures shall be deemed valid as originals.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

State of:
County of:

PLAINTIFF

Subscribed and sworn to before me this day of _____, 2009.

By: _____
Name: _____
Title: _____

Notary Public
My commission expires:

[NOTORIAL SEAL]

State of:
County of:

GENERAL CONTRACTOR

Subscribed and sworn to before me this day of _____, 2009.

By: _____
Name: _____
Title: _____

Notary Public
My commission expires:

[NOTORIAL SEAL]

State of:
County of:

SUBCONTRACTOR

Subscribed and sworn to before me this day of _____, 2009.

By: _____
Name: _____
Title: _____

Notary Public
My commission expires:

[NOTORIAL SEAL]

Contributed by Angela Ligouri Ballisty

EXHIBIT A

SCOPE OF WORK