

AGREEMENT BETWEEN

Owner

AQUAVISTA of PAMANA CITY BEACH OWNERS ASSOCIATION, Inc.

and

CONTRACTOR

C-SHARPE CO., L.L.C

This Agreement is made this _____ day of April in the year 2022, by and between the
OWNER and the **CONTRACTOR** for services
in connection with the following,

**RESTORATION OF THE EXTERIOR FAÇADE,
WATERPROOFING & SEALING, CONCRETE AND
STUCCO REPAIRS**

(hereinafter "Project"). Owner and Contractor are the "parties" to this Agreement.

The Architect (hereinafter "Architect") on the project is Pendleton + Bowman, Inc.

The Owner and Contractor agree as follows:

According to Florida's Construction Lien Law (Sections 713.001-713.37, Florida Statutes), those who work on your property or provide materials and services and are not paid in full have a right to enforce their claim for payment against your property. This claim is known as a construction lien. If your contractor or a subcontractor fails to pay subcontractors, sub-subcontractors, or material suppliers, those people who are owed money may look to your property for payment, even if you have already paid your contractor in full. If you fail to pay your contractor, your contractor may also have a lien on your property. This means if a lien is filed your property could be sold against your will to pay for labor, materials, or other services your contractor or a subcontractor may have failed to pay. To protect yourself, you should stipulate in this contract that before any payment is made, your contractor is required to provide you with a written release of lien from any person or company that has provided to you a "notice to owner." Florida's construction lien law is complex, and it is recommended that you consult an attorney.

Construction Industry Recovery Fund:

PAYMENT MAY BE AVAILABLE FROM THE CONSTRUCTION INDUSTRIES RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER AGREEMENT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A STATE 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 Industries Licensing Board

Construction Industries Recovery Fund
1940 North Monroe Street
Tallahassee, FL 32399-2202 (850) 487-1395

I. Contract Sum.

The Owner shall pay the Contractor the contract sum in current funds for the Contractor's performance of the Contract. The Contract sum shall be **Two Million Two Hundred Forty Four Thousand Three Hundred Seventeen and 00/100 U.S. Dollars (\$2,244,317.00)**. The Contract Sum is based upon the scope of work and values and unit costs, as set forth in the Project Manual and the Exhibits as listed in Article II, Section 2.1.

II. Contract Documents

2.1 The Contract Documents in existence at the time of the execution of this Agreement are as follows:

- Exhibit A: Project Manual dated 28 January 2022
- Exhibit B: Addendum Number one dated 22 February 2022
- Exhibit C: Owner Approved Project Budget Dated 7 April 2022
- Exhibit D: Contractor's Revised Schedule Dated 7 April 2022

2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work (which includes materials) by the Contractor. Should the Contractor discover a conflict in the plans or specifications or between any of the Contract Documents, that conflict should be brought to the attention of the Architect with a "request for information." In the event of a conflict between any of the Contract Documents that cannot be resolved by the agreement of the parties, the order of priority shall be (1) Written Change Orders or Amendments to this Agreement; (2) Clarifications signed by both parties in writing; (3) this Agreement; (4) the Project Manual and any additional plans and specifications prepared by Architect; (5) the other Contract Documents.

2.3 Where no explicit quality or standard for materials or workmanship is established by the Contract Documents, the Contractor will perform the Work in compliance with industry standards, and in a workmanlike manner. Notwithstanding the foregoing, no work shall be furnished by Contractor which is not in accordance with the requirements of the Contract Documents.

2.4 The Contractor has prepared a bid for the work, which is attached hereto as Exhibit C and made a part of this Agreement for all purposes. This bid includes all demolition, supervision, labor, materials, equipment, systems, temporary utilities, machinery, tools, shop drawings, samples and submittals, and all other labor, services and materials of every description to complete the Work.

2.5 The Contractor's execution of this Agreement constitutes a representation by the Contractor that it has investigated, examined, inspected, and thoroughly familiarized itself with

the Contract Documents, the site and its relationship to the adjoining premises and is familiar with the local conditions under which its work is to be performed, has reasonably investigated such conditions, has evaluated the limited availability of staging space and parking on-site including the need for it to obtain off-site staging and parking, and has correlated its observations with its requirements with the Contract Documents. The Contractor further warrants that neither the Owner nor the Architect has made any representations of any kind or nature not contained in this Agreement; the Owner warrants that the Contractor has not made any representations of any kind or nature not contained in this Agreement. The Contractor further warrants and represents it has taken into account that no weather days have been anticipated, and no consideration has been given to the effect of pandemic restrictions or limitations. The commencement of the work or any portion thereof by the Contractor shall indicate that the job site, or that part thereof which the work is being installed and/or performed, is in proper condition for the reception and installation of the work subject to the provisions set forth in Article VII herein.

2.6 Permitted Fee and Utilities Services Costs. The Contractor shall secure and pay for all permits in connection with the work, unless indicated otherwise, and shall pay for all connections to building for water, electric, and other utility service during construction until Final Acceptance by the Architect of the work.

2.7 Building Codes. The Contractor hereby represents and warrants to the Owner that the Contractor shall construct the work in compliance with the plans, specifications, governing building codes, and all other applicable national, state, or county laws and ordinances, and in accordance with the terms of this Agreement. To the extent that the Contractor becomes aware that the plans and specifications are not in compliance with all applicable national, state, or county codes, including but not limited to, the Florida Building Code or to the extent that the Contractor is to perform any additional work, the Contractor shall secure instruction from the Architect prior to proceeding with the work that is not in compliance and prior to proceeding with any additional work. Should the plans not be in compliance with applicable building codes, Contractor shall be entitled to an equitable adjustment for the cost of such additional work.

III. Work

3.1 Date of Commencement and Substantial Completion. Contractor shall fully mobilize and begin work on **Monday, 2 May 2022**. Owner shall sign and the Contractor shall have recorded a Notice of Commencement in accordance with the requirements of Chapter 713, Florida Statutes, prior to starting work on the Project. Contractor shall achieve final completion of the Work set forth herein no later than **thirty-five (35) weeks from commencement**. Time is of the essence in this contract. The parties have evaluated the potential damages suffered by the Owner and its constituent condominium unit owners if the performance of the contract is delayed. The Contractor acknowledges that the condominium units are used primarily for Owner's use. The parties agree that other potential damages exist but will be difficult, if not impossible, to calculate should the work not be timely completed. Should Contractor fail to achieve substantial completion by the substantial completion date, the parties have agreed that the Contractor shall pay as **liquidated damages the sum of \$250.00** per day for which construction activities remain after the substantial completion date. Contractor shall be entitled

to an extension for delays caused by a named tropical storm or hurricane impacting the job site, or for an incremental weather event that directly impacts the job site and for which notification, in writing, is provided to the Architect within one (1) business day of the event and the Architect provides written signed approval for the extension. Architect's approval for weather events that are not caused by named tropical storm or hurricane shall be based on the Architect's sole determination if the weather event caused a delay and the amount of time for the delay. Contractor's failure to timely notify Architect of an extension request as required above shall be deemed a waiver of the right to claim any extension of time arising from such incremental weather event. Owner and Contractor agree that Contractor has been advised, prior to execution of this Agreement, of concurrent work on the Condominium elevators, and that the loss of use of such elevators shall not form the basis for a request for extension of time.

3.2 Construction Schedule. Contractor has submitted to the Architect a construction schedule document which will specify the dates on which the Contractor plans to begin and complete various parts of the work, including dates on which information approvals are required from the Architect. On the Architect's written approval of this schedule, the Contractor shall make every reasonable effort to comply with it unless directed by the Architect to do otherwise. The Contractor will update the schedule on a monthly basis, or at appropriate intervals as required by the conditions of the work in the project provided that updates less frequently than monthly require Architect's advance written approval.

3.3 Changes in Work. The Owner may order changes in the work within the general scope of the contract consisting of additions, deletions or other revisions, the contract price and the contract time being adjusted accordingly. All such change orders shall be based upon agreement between the Owner, Contractor, and Architect and must be in writing signed by Contractor, Architect and Owner. Any change in Contract Price must be specifically negotiated. All such changes in the work shall be authorized by applicable written and signed change orders and shall be performed under the applicable conditions of the contract documents. Any written change order will contain any adjustments in the contract price or contract time as agreed to by the parties and must be signed by Contractor, Architect and Owner. Contractor shall not be entitled to any additional payment, or any extensions of time for the Completion Date for any changes, including additional work unless a written change order has been executed in advance and signed by Contractor, Architect and Owner.

IV Suspension of Work

4.1 Should the Architect order the Contractor in writing to suspend, delay, or interrupt the performance of this Agreement or any part which affects the Work for such period of time as may be determined to be appropriate for the convenience of the Owner and not due to any act or omission of the Contractor or any other person or entity for whose acts or omissions the Contractor may be liable, then the Contractor shall immediately suspend, delay or interrupt that portion of the Work as ordered by the Architect. The Owner shall compensate the Contractor for all costs directly associated with the suspension of work, including completed work not previously paid and all retainage withheld, and all costs associated with protection of the Work during the period of suspension. Contractor will be responsible to keep the building dry from the

openings that are a part of the scope of work. If suspension is requested, Contractor will be provided with adequate time to ensure that openings are watertight.

4.2 Any action taken by the Owner or Architect which is permitted by any other provision of the Contract Documents and which results in a suspension of part or all of the Work does not constitute a suspension of work under this article.

4.3 Should Contractor (a) fail to correct, replace and/or re-execute faulty or defective Work and/or materials furnished under the Contract; (b) fail to complete or diligently proceed with this Contract within the time required by the terms of the Contract; (c) fail to correct or repair any damage to the Work caused by Contractor, or those for whom it is responsible, or by virtue of Contractor's failure to protect its Work; (d) refuse or fail to provide sufficient properly skilled workers, adequate supervision or materials; or (e) otherwise be in default of any provision of this Agreement or the Contract Documents, then Owner shall provide written notice to Contractor, which shall state with particularity the nature of the claimed item(s) of default. Within seven (7) calendar days of receipt of that Notice, Contractor shall provide to Architect a detailed written recovery plan and shall immediately take steps to implement that recovery plan. If the Architect determines that the recovery plan, or the Contractor's implementation of that recovery plan is insufficient, then the Owner shall have the right to correct, replace or otherwise remedy any such defects, deficiencies or delayed performance by any reasonable and expedient means, including immediate termination of the contract, taking over or supplementing Contractor's Work and materials and employing such additional labor, equipment and materials as may be necessary to cure the default and achieve compliance with this Agreement and the Contract Documents. In such event, Owner may deduct and withhold from payments then or thereafter to become due Contractor the actual cost of correcting such deficiencies or the reasonably anticipated cost of correcting such deficiencies, as applicable. If payments then or thereafter due Contractor are not sufficient to cover such amount, the Owner reserves all rights and remedies provided for under Florida law. Notwithstanding the foregoing, in the event the Architect determines that an unsafe condition exists which requires an immediate remedy, Owner may correct the condition at Contractor's expense, but only after a reasonable attempt has been made to notify the Contractor of such condition.

V. Termination of Work

5.1 Upon seven (7) days written notice to the Contractor, the Owner may, without cause, terminate this agreement with the Contractor should unforeseen circumstances arise that make it necessary or desirable for the Owner to stop the work.

5.2 The Contractor shall immediately stop work and shall be entitled to be paid the Contract Price for the Work performed by the Contractor at the time of receipt of the above-described written notice, along with all costs associated with the termination, including without limitation any liabilities that the Contractor has to incur through its subcontractors or material suppliers for Work furnished and incorporated into the Project as of that date. However, Contractor shall not be entitled to recovery of profit for work not performed in the event of such termination or for unabsorbed overhead, anticipatory profits, or any damages resulting from this termination except for its demobilization expenses actually incurred and paid. Contractor shall

also refund to Owner any mobilization expense it has paid but which is not represented by the value of Work performed. Upon receipt of payments as provided above, the parties shall have no further obligation to each other except for Contractor's obligations to provide corrective and/or warranty Work relating to Work actually performed by Contractor or any of its tier subcontractors prior to its termination, and its obligation to provide indemnification as provided by this Agreement.

5.3 The Owner may also terminate the contract for any material breach of this contract as provided for by Paragraph 4.3 above.

5.4 Even after termination, the provisions of this Agreement still apply to Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date. However, Contractor shall not be required to continue performance if the Owner is in substantial breach of its payment obligations under this Contract.

5.5 No provisions of this Contract shall be deemed to preclude, modify, impair or delay in any manner the Contractor's rights or remedies under Florida law, including without limitation its rights under Chapter 713, Florida Statutes.

5.6 Contractor's Right to Suspend Work and/or Terminate. Should the Owner fail to make payment to the Contractor as set forth in Paragraph 6.1 below, or should Architect fail to accept or reject a payment application within ten (10) days of submittal, the Contractor shall be entitled upon the giving of seven (7) business days' notice to suspend work. Should the payment default not be resolved within five (5) days of such suspension, the Contractor shall be entitled to terminate its work and pursue all remedies provided for by Florida law.

VI. Pay Applications and Completion

6.1 Applications for payment shall be submitted electronically on a monthly basis. The Contractor is required to submit its application and certification for payment with an original AIA Document G702 and G703 to the Architect. The Architect shall review and make recommendation to the Owner for payment. Each pay application is due by the 25th of each month. Owner shall remit payment to the Contractor for all items approved by the Architect by the 15th day of the following month or certify in writing by the 10th day of the month detailed reasons for not approving payment. If the pay application is made after the 25th day of the month, these payment deadlines (or detailed reasons why payment is not made) shall be 20 days after actual receipt of the payment application by Architect. Attached to the application and certification for payment shall be a partial release and waiver of liens from the Contractor, subcontractor, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and/or equipment relating to the work. The format for the release and waiver of lien shall be in accordance with Florida Statute Section 713.20 and must state the subcontractor, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and/or equipment relating to the work that has been paid in full by the Contractor for all services rendered up through the day of the previous certificate of payment, and for which payment in full has been made.

6.2 Each application for payment shall be based on the schedule of values and the most recent construction schedule submitted by Contractor and approved by Architect in accordance with the Contract Documents. The schedule of values shall allocate the entire contract sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing Contractor's applications for payment.

6.3 Applications for payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment.

6.4 From each progress payment made prior to the time substantial completion of the Work has been reached, the Owner may retain ten (10%) of the amount otherwise due after deduction of any amounts as provided. If the project is bonded, then 10% retainage will be held from each pay application until the project is 50% complete and if the Contractor is on Schedule as deemed by the Architect, no additional retainage will be withheld.

6.5 Except with the Architect's prior approval, the Contractor shall not make advance payments to suppliers for equipment or materials, which have not been delivered and stored on site.

6.6 The Architect may adjust or reject the Contractor's payment application in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based on the following:

- a. The Contractor's failure to perform the work as required by the contract documents;
- b. Loss or damage arising out of or relating to this Agreement and caused by Contractor to the Owner, or others to whom the Owner may be liable, except that no alleged loss or damage founded on a claim of loss of use or loss of rental revenue from any condominium unit shall form the basis for any adjustment or rejection of a payment application;
- c. The Contractor's failure to properly pay subcontractors for labor, materials, equipment or supplies furnished in connection with the work and furnish proof of such payment in the manner required by Section 6.1;
- d. Nonconforming or defective work not corrected in a timely fashion;
- e. Reasonable evidence of delay in performance of the work by the Contractor, such that the work will not be completed within the contract time; and
- f. Reasonable evidence demonstrating that the unpaid balance of the contract price is insufficient to fund the cost to correct or complete the work.

Any such adjustment or rejections may only be done after written verification from Architect that the adjustment or rejection is reasonably necessary to protect the Owner from loss or damage.

6.7 The Contractor shall notify the Architect when it considers that substantial completion of the Work or a portion thereof to have been achieved. Substantial completion shall be defined as the date on which the Work has progressed to the point at which all work specified in the Scope of Work and any Change Orders are completed in accordance with the Contract Documents, prior to the final punch list. Substantial completion as to any particular unit is not achieved until the foregoing requirements are satisfied and the Work has progressed to the point of allowing for beneficial use of the condominium unit by the condominium unit owner. Contractor shall provide a substantial completion punch list to the Architect. The Architect shall review the punch list and conduct an inspection of the building making any additions to the punch list as the Architect deems appropriate. The Contractor shall promptly correct all punch list items. Once the Contractor determines the punch list items have been corrected it will notify the Architect who will inspect the building to verify the Work has been completed.

6.8 Final Completion and Payment.

A. When final completion has been achieved as to all of the Work in the Contract Documents, the Contractor shall prepare for the Owner's acceptance a final application for payment stating that, to the best of the Contractor's knowledge and based on the Architect's inspections, the Work has reached final completion in accordance with the terms and conditions of the Contract Documents.

B. Prior to final payment, Contractor shall provide the Architect with documentary verification satisfactory to the Architect that all material suppliers, subcontractors and workers have been paid for all amounts owed to them for work for which Contractor has previously been paid. This includes, but is not limited to, lien waivers.

C. Final payment of the balance of the contract price shall be made to the Contractor within 15 days after the Contractor has submitted (i) a complete, accurate and approved application for final payment, (ii) verification as set forth in subparagraph 6.8(B) and (iii) documentation as set forth in subparagraph 6.8(D).

D. All outstanding amounts due Contractor shall be paid upon the Contractor's submission of the following to the Architect:

- a) An affidavit declaring any indebtedness to all subcontractors and vendors, e.g. payrolls or invoices for materials or equipment;
- b) Manuals, copies of warranties and all other close-out documents required by the Contract Documents;
- c) Consent of any surety (if surety bond expressly requires); and
- d) All documents specified in Section IX. below.

VII. Performance of Work

7.1 The Contractor is responsible for the supervision and coordination of all the Work, including the construction means, methods, techniques, sequences and procedures utilized, unless the Contract Documents give other specific instructions.

7.2 Prior to commencing the Work, the Contractor shall examine and compare: the Contract Documents, information furnished by the Owner, relevant field measurements made by the Contractor, and any visible conditions at the site affecting the work.

7.3 If in the course of the performance of the contract the Contractor discovers any errors, omissions or inconsistencies in the Contract Documents, the Contractor shall promptly report them to the Architect.

7.4 If the Contractor discovers but fails to report errors in the Contract Documents, the Contractor shall not be entitled to recovery of additional costs that could have been avoided had the Contractor conducted a reasonable review. Notwithstanding any language to the contrary, however, the Contractor is not the design professional for this project and does not undertake design professional liability. Unless the Contractor actually discovers or is in such position as it should, with reasonable review, discover an error in the plans or specifications, the Contractor shall be entitled to rely on the accuracy of the plans and specifications.

7.5 The Contractor shall provide a competent level of supervision for the performance of the Work at the Project, including a Contractor's representative, who shall possess full authority to receive instructions from Architect and to act on those instructions, and who shall be fluent in English.

7.6 As between the Owner and Contractor, the Contractor shall be responsible to the Owner for acts or omissions of parties or entities performing portions of the work for or on behalf of the Contractor or any of its subcontractors, but only to the extent such acts or omissions arise directly from performance of the contract work. Any duty to indemnify and/or hold harmless shall be deemed co-extensive with the insurance coverages that Contractor is required to maintain under the terms of this Agreement and shall not be deemed to extend beyond the coverages and dollar limitations provided for by such policies.

7.7 Contractor shall permit only fit and skilled persons to perform the Work. Contractor shall enforce safety procedures, strict discipline and good order among persons performing the Work.

7.8 Every part of the Work shall be executed in accordance with the Contract Documents and in a workman like manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new, except such materials as may be expressly provided in the Contract Documents to be otherwise.

7.9 If the Contractor fails to correct defective work within a reasonable time after notification, the Owner may either (a) allow the Contractor at its option to correct the work or (b) have the work corrected by itself or others and charge the Contractor for the reasonable cost

of the correction. Failure to provide a corrective action plan with an agreeable timeline for repairs or commence corrective work within ten (10) business days after notification from Architect shall create a rebuttable presumption that Contractor has not corrected the work within a reasonable period of time.

7.10 The Contractor is required to correct in a timely fashion any work rejected by the Architect or Owner that fails to comply with the Contract Documents.

7.11 The Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work. While the provisions of this paragraph establish the responsibility for safety between the Owner, Architect and Contractor, they do not relieve subcontractors of their responsibility for the safety of persons or property in the performance for their work nor for compliance with the provisions of applicable laws and regulations. Contractor is not responsible for owners and guests who ignore safety warnings and precautions.

7.12 The Contractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect the following from the hazards that would reasonably be anticipated from the Work and which are reasonably under Contractor's Control:

- a. employees and other persons at the site;
- b. materials and equipment stored at on-site or off-site locations for use in performance of the work; and
- c. the project and all property located at the site and adjacent to work areas, whether or not said property or structures are part of the project or involved in the work.

7.13 The Contractor shall designate an individual at the site in the employ of the Contractor, who shall act as the Contractor's designated safety representative.

7.14 Damage or loss which may arise from the performance of the Work to the extent of the negligence or breach of this Agreement attributed to such acts or omissions of the Contractor or anyone for whose acts the Contractor may be liable, shall be promptly remedied by the Contractor.

7.15 If the Architect or Owner deems any part of the Work or worksite unsafe, the Architect or Owner, without assuming responsibility for the Contractor's safety program, may require the Contractor to stop performance of the Work or take corrective measures satisfactory to the Architect and Owner.

7.16 Current record copies incorporating field changes and selections made during construction are to be maintained at the Contractor's office and available to the Architect or Owner upon request. All drawings, specifications, addenda, change document and other modifications, and required submittals, including product data, samples, shop drawings, meeting minutes, and subcontractor files shall be maintained at the Contractor's office and made available to Architect and/or Owner upon request.

7.17 No substitutions shall be made in the Work without written approval from the Architect.

7.18 The Contractor acknowledges that it has visited or has had the opportunity to visit the project site to visually inspect the general and local conditions which could affect the Work.

7.19 The Contractor shall compare its field measurements and observations with the Contract Documents before commencing the Work. The Contractor shall promptly report any recognized errors, inconsistencies or omissions to the Architect. If the Contractor fails to report to the Architect any recognized errors, inconsistencies or omissions, the Contractor shall bear the cost or be liable to the Owner for damages resulting therefrom.

7.20 The Contractor shall at all times during its performance of the Work keep the work site clean and free from debris resulting from the Work. Prior to discontinuing work in an area, the Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. Contractor shall make reasonable provisions to minimize and confine dust and debris resulting from construction activities.

7.21 The Contractor shall facilitate the access of the Owner's representative to work in progress. Owner's representative visits will be coordinated among the management of the Owner Condominium Association, the Architect, and the Contractor.

7.22 The Contractor acknowledges that the condominium is occupied. Contractor agrees to coordinate its construction activities so as to minimize the noise and inconvenience to the inhabitants of the units. Owner acknowledges, however, that the work will necessarily entail noise and some inconvenience to the inhabitants of the units. Contractor shall provide not less than two (2) weeks-notice to Architect prior to beginning work on a particular unit or portion of the condominium, and Contractor shall thereafter make reasonable efforts to notify Architect of any changes in such schedule.

7.23 Any drawings, plans, specifications, analyses, proposals, reports, photographs, models or other information, data or documents proprietary to the Architect but not relating to the Contractor's means, methods, techniques or processes (whether in raw, preliminary or final form) which are developed by the Contractor while performing work under this agreement belong to the Architect and are Architect's confidential information.

7.24 Unless otherwise specified, Architect has provided an email set of the Contract Documents, including drawings, plans, and specification, to the Contractor without cost.

7.25 Except as otherwise provided herein, the Contractor shall be responsible for any damages claims made by individual unit owners relating to individual unit owners' personal property or to elements of the unit that are not common elements, to the extent such claims are the result of Contractor's negligence or breach of this Agreement or the Contract Documents. The Owner waives the right to seek consequential damages arising out of or relating to Contractor's work, and further agrees that it shall be entitled to no actual damages for delay, with the liquidated damages provided for herein being the only remedy for damages caused by delay.

7.26 The Work not performed by the Contractor with its own forces shall be performed by subcontractors.

7.27 Contractor shall supply a Payment and Performance Bond in an amount equal to the principal sum of this Contract. The bonds must be issued by a surety company having, at a minimum, a "Best Rating" of "A" by A.M. Best Company and licensed to do business in Florida.

7.28 Owner and Contractor agree that Contractor has been advised, prior to execution of this Agreement, of concurrent work on the Condominium that may be performed by others on building systems to include elevator, electrical and plumbing. Contractor agrees to cooperate with requests of Architect to coordinate work with that of others. Contractor shall be entitled to an extension of time in conjunction with any alleged delay resulting from such coordination only if notification of such claim is provided, in writing, to the Architect within one (1) business day of the event and the Architect provides written signed approval for the extension. Architect's approval or rejection of such request shall be based on the Architect's sole determination if the event caused a delay and the amount of time for the delay. Contractor's failure to timely notify Architect of an extension request as required above shall be deemed a waiver of the right to claim any extension of time arising from such event.

7.29 The roof of Owner's Condominium is a shingle-ply NDH system installed in 2020 and under warranty from manufacturer Mule-Hide Products Co., Inc. ("Mule Hide"). Prior to commencement of the Work, Owner has obtained permission from Mule Hide for Contractor to utilize the roof system in conjunction with swing stages using roof weights. Contractor has been provided a copy of the applicable warranty dated December 4, 2020 ("Warranty") and its incorporated Building Owner's Roof Care and Maintenance Guidelines ver.2.03 ("Guidelines"). Contractor agrees and understands that its use of the roof for roof weights, or otherwise in conjunction with Contractor's performance of the Work, shall be in accordance with the Warranty and Guidelines and that walkways or other adequate protection approved by Mule Hide will be used to avoid adverse impact on the roof system. The parties agree that damage to the Mule Hide roof system is not inherent the use of the roof by Contractor during performance of the Work. Any damage to the roof system by Contractor or those for whom it is responsible, whether due to traffic, materials, staging, or any other reason, shall be subject to prompt repair by the Contractor at its expense and in accordance with the Warranty and Guidelines and Contractor's obligations to Owner under Sections 7.6 and 7.14 of this Agreement; provided, however, that if Contractor exercises reasonable care and otherwise strictly complies with the Guidelines and the roof is nonetheless damaged, Contractor shall have no obligation to repair the damage.

VIII. Insurance

8.1 Prior to the start of Contractor's Work, Contractor agrees to obtain and maintain in full force and effect, at its own expense, until completion of all Work herein and with insurance companies with an A.M. Best rating of A-VII or better:

- a. Statutory workers' compensation insurance in accordance with the requirements of the laws of the state of Florida.
- b. Broad form commercial general liability insurance covering personal injury, bodily injury, property damage, collapse, underground for both premises and operations; independent contractors/subcontractors, contractual liability pursuant to standard ISO form CG 00 01 (or carrier equivalent), products/completed operations, and damage to premises rented to you. Minimum required limits shall be a) \$1,000,000.00 combined single limit per occurrence, b) damage to premises rented to you \$100,000. Coverage for products/operations must be maintained for at least two (2) years after Final Substantial Completion of the Work. The General aggregate limit shall apply on a designated project basis. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the Agreement (or earlier) must be maintained during the full term of the Agreement.
- c. Umbrella Liability coverage at minimum limits of \$5,000,000.00 with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies.
- d. ~~Comprehensive~~ Commercial automobile liability insurance for owned, hired and non-owned and employee non-ownership, \$1,000,000.00 combined single limit per occurrence.
- e. "Installation Floater works" coverage, upon the entire Work at this site, for up to \$150,000.00 and shall be responsible for payment of any and all deductibles. This insurance shall cover all work in progress, stored materials, and any and all equipment at the job site.
- f. All insurance provided herein shall be kept in force and effect for two years following substantial completion date, provided such coverage is commercially available at reasonable rates.
- g. The Owner and Architect shall be listed as an additional insured under endorsement forms CG 20 10 and CG 20 37, or their equivalents, on all policies of insurance listed in this Section, except for workers' compensation/employer's liability and professional liability. Naming the Owner and Architect as additional insureds on Contractor's insurance policies is intended to apply only to the extent that a negligent act or omission by Contractor causes a claim to be asserted or a loss to be sustained by Owner or Architect. This additional insured endorsement is not intended and shall not be construed to cause Contractor's insurer to be liable either to defend or to indemnify Owner or Architect for claims against or losses sustained by Owner or Architect that are not due to the acts or omissions of Contractor.
- h. A waiver of subrogation in favor of the Owner shall be contained in the Workers Compensation, and all liability policies required herein.

8.2 Contractor shall furnish certificates of insurance to Owner prior to the effective date of this Agreement, attesting in each case to the existence of said insurance, showing applicable deductibles, if any, and a declaration stating whether the policy excludes punitive

damages, is on a claims-made basis. Owner shall make any objections to said insurance that is not in compliance with these requirements in writing prior to the execution of this Agreement. To the extent within the Contractor's knowledge and control, Contractor shall give prompt notice, upon knowledge, of cancellation or non-renewal to the Owner. The workers' compensation insurance shall similarly provide for 30 days advance notice to the Owner of cancellation or non-renewal thereof. In the event that Contractor fails to maintain any insurance coverage required under this Agreement, the Owner may terminate this Agreement should the Contractor not remedy this default within seven (7) working days of written notice from the Owner.

8.3. Prior to the start of any Sub-Contractor's work on the Project, Contractor shall ensure that the Sub-Contractor obtains and maintains in full force and effect, at the Sub-Contractor's own expense, until completion of all Work herein and with insurance companies acceptable to the Owner:

- a. Statutory workers' compensation insurance in accordance with the requirements of the laws of the state of Florida.
- b. Broad form commercial general liability insurance covering personal injury, bodily injury, property damage, collapse, underground for both premises and operations; independent contractors/subcontractors, broad form contractual, products/completed operations, and damage to premises rented to you. Minimum required limits shall be a) \$1,000,000.00 combined single limit per occurrence, b) damage to premises rented to you \$100,000. Coverage for products/operations must be maintained for at least two (2) years after the construction work has been completed. The General aggregate limit shall apply on a per job basis. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the Agreement (or earlier) must be maintained during the full term of the Agreement.
- c. ~~Comprehensive~~ Commercial automobile liability insurance for owned, hired and non-owned and employee non-ownership, \$500,000.00 combined single limit per occurrence.
- d. All insurance provided herein shall be kept in force and effect until termination of the Sub-Contractor's warranty period (if applicable).

8.4 Intentionally Omitted.

8.5 Owner shall maintain its usual insurance. In the event Contractor's Work is damaged during construction prior to completion of the Project, through no fault of Contractor (including, without limitation, from events such as fire, flood, wind, vandalism, acts of war, terrorism, or other events beyond Contractor's control), the Owner shall be responsible for the costs of repairing and/or reconstructing the Work, including Contractor's reasonable overhead and profit. The Owner acknowledges that insurance policies (i.e., "builder's risk" insurance policies) are available to protect against such risk and may elect to purchase (but is not obligated to purchase) such insurance. If events not the fault of the Contractor cause damage to the Project, including, without limitation, any work installed by the Contractor or materials stored by

the Contractor for the Project, the Contractor will be paid for any and all work performed, including installed and stored material, which was in place prior to the event. This payment for work will be paid to the Contractor according to the payment schedule outlined in this Contract and will not be delayed in any way even if the Owner is in process of collecting Insurance funds (if available) for damages to the Contractor's work.

8.6 The parties agree to waive the right to subrogation on all policies affording coverage to the parties to the extent such loss is covered.

IX. Warranties

9.1 The Contractor warrants to the Owner that materials used, and equipment furnished shall be new and of good quality. The Contractor further warrants that the Work will be free from material defects not intrinsic to the design. The Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or others, or abuse.

9.2 With the exception of material that may have a shorter or longer manufacturer's warranty, or any component of the Work for which a longer warranty period is set forth in the Project Manual, Contractor warrants its Work for two years from the date of completion. If within two years after the date of completion of the Work any Work is found to be defective, the Owner shall notify the Contractor in writing. Warranties relating to materials and workmanship shall be consistent with manufacturer's warranties. Contractor shall promptly correct the defective work. For purposes of this Section, date of completion shall be defined as the date of issuance of a letter by Architect acknowledging all punch list items have been completed and close out documents have been received.

9.3 With respect to any portion of Work first performed after completion, the warranty period shall be extended by the period of time between completion and the actual performance of the corrective Work.

9.4 The Contractor shall obtain from its subcontractors and suppliers any special or extended warranties required by the Contract Documents. Contractor shall provide to Owner a complete set of written warranties from all subcontractors, material suppliers and manufacturers upon completion of the job.

9.4.1 Contractor is providing a two-year contractor's warranty pursuant to paragraph 9.2 above. Any warranty claims beyond two years shall be addressed by the manufacturer or other issuer of said warranty, and Contractor shall have no liability or responsibility in relation to any such warranty claims beyond Contractor's two-year contractor's warranty period.

9.5 Notwithstanding any other provision herein to the contrary, Architect shall be directed by Owner to review the Work and progress thereof at the time of substantial completion in order to review the Work and to comply with any provision herein requiring Architect's input.

9.6 Nothing contained in this Agreement shall be construed to establish a period of limitation with respect to other obligations that the Contractor may have under this Agreement. The establishment of the time period of two years as described herein relates only to specific obligation of the Contractor to correct the work and has no relationship to the time within which the obligation to comply with the Agreement may be sought to be enforced or the time within which proceedings may be commenced to establish Contractor's liabilities with respect to Contractor's obligations.

9.7 In addition to the above warranties, Contractor acknowledges Owner is a Condominium Association organized pursuant to Chapter 718, Florida Statutes. Contractor warrants all work, labor, materials, and services in accordance with the terms and conditions identified herein.

9.8 Contractor shall provide Owner with written maintenance guidelines upon completion specifically including recommendations regarding maintenance of all waterproofing materials and sealants.

X. Party Representatives

10.1 The Owner's representative is:
Lou Christian, President
Aquavista of Panama City Beach Owners Association, Inc.
17155 Front Beach Road
Panama City Beach, FL 32413

10.2 The Owner's Architect's representative is:
Victor S. Bowman AIA
Box 4877
Santa Rosa Beach, FL 32459
850-585-6186

10.3 The Contractor's representative is:

Jimmy Boswell
22657 Canal Road
Orange Beach, AL 36561
850-598-0549

XI. Miscellaneous Clauses

11.1 Jurisdiction. Venue and jurisdiction for any dispute involving this contract shall rest solely and exclusively within a court of competent jurisdiction in Bay County, Florida.

11.2 Attorneys' Fees. In the event of any dispute of any nature arising from this contract, either during construction, after construction, or after termination of the contract, the

prevailing party shall be entitled to recover reimbursement for all its legal expenses and associated costs including, without limitation, all fees and costs incurred in establishing the entitlement to and/or the amount of said fees and costs, as well as all fees and costs, including attorney's fees, incurred in post-judgment collection.

11.3 Indemnification. The Contractor agrees that it will defend, indemnify, and hold the Owner harmless from all claims asserted against the Owner that arise out of Contractor's negligent performance or breach of the Agreement or other Contract Documents, whether those claims are the result of bodily injury or property damage or assertion of a contract right. This duty shall extend only to claims caused by the negligent acts or omissions, or breach of this Agreement, of the Contractor, its employees, or legal agents. Contractor shall not be responsible for attorney's fees, defense costs, or damages attributable to the acts of others. Notwithstanding this provision, Contractor shall have no responsibility to defend or indemnify Owner from liens or any other encumbrances which attach to the property as a result of the Owner's failure to pay funds due to the Contractor. The above-described defense, indemnity, and hold-harmless obligations apply only to the extent (on a pro-rata basis) that such claims arise out of Contractor's negligent performance or breach of the Agreement or other Contract Documents.

11.4 Assignment. Neither the Owner nor the Contractor shall assign its interest in this agreement without the written consent of the other.

11.5 Severability. 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.

11.6 Non-Waiver. The failure of either party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this agreement or to exercise any of its rights shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

11.7 Joint Drafting. The parties hereto expressly agree that this Agreement was jointly drafted and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this agreement shall be construed neither against nor in favor of either party but shall be construed in a neutral manner.

11.8 Entire Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Contractor and not for the benefit of any third party, except to the extent expressly provided in this Agreement.

11.9 Privilege. No provision of this Agreement shall be construed as a waiver of the right to confidential and privileged communications including, without limitation, the attorney-client privilege, the work product privilege, or the accountant-client privilege.

11.10 Increases to Contract Price. Except as otherwise provided in the Contract Documents, no claims for increases to the Contract Price will be allowed to the Contractor unless

authorized by written Change Order by the Owner or Architect, or by written directive to perform the work by Owner or Architect.

11.11 Time. Unless otherwise provided in this Contract, all references to the term days shall mean calendar days.

XII. Special Provisions

If the language contained in this Article XII differs from the language contained elsewhere in the Contract Documents, the terms of the language contained in this Article XII shall prevail.

1. All parties understand and acknowledge the design procedure and work scope for this Project was not made by the Contractor. The Contractor has provided a quote to perform a specific work scope prepared by the Architect. Contractor cannot warrant failures attributable to undetected deficiencies in the underlying substrate or in the work scope. Provided, however, that Contractor is required to visually inspect the underlying substrate and, if deficiencies are detected or should be detected in the visual inspection of the underlying substrate, Contractor shall report the deficiencies, in writing, to the Architect, who shall promptly direct the Contractor in the manner in which Contractor shall proceed. If existing differing or latent conditions in the substrate are not detected by Contractor despite Contractor's diligent visual inspection, the fact that Contractor proceeds with work does not constitute acceptance of those existing conditions.

2. All parties recognize that every job site potentially has existing moisture-infiltration issues and, as a result, it is possible that fungi, mold, or organic pathogens or other contaminants (airborne or otherwise) may already be present in or about the job site and such circumstances are an acknowledged precondition to commencement of the Contractor's Work by the Contractor. By executing the Agreement, the parties acknowledge that Contractor has been retained to perform a defined scope of work at the job site as defined in the Contract Documents and, unless otherwise expressly specified in the Contract Documents, the Contractor has not guaranteed the detection, removal, or eradication of mold, fungi, organic pathogens, or other contaminants. At no time either during the project or after the work of this Contract is complete will the Contractor be held liable for any mold/mildew, remediation of mold, recurrence of mold/mildew, testing for mold, or any toxic substance, unless such mold/mildew or toxic substance resulted from Contractor's faulty workmanship or breach of this Agreement.

3. The Owner acknowledges the work of this Contract is not a part of the original building construction and Contractor is at no time liable for any construction defects that existed prior to Contractor's work unless repair or replacement of those construction defects are expressly included in Contractor's scope of work.

4. Due to the existing construction, which (except as expressly indicated) is not being modified, upgraded, or replaced under the work of this Contract (including, without limitation, existing wall-cladding joint dimensions), some new materials (including, without limitation, sealants), may not be installed in complete accordance with manufacturer's recommendations. In such areas where Contractor determines materials may not be installed per

manufacturers specification due to existing construction, Contractor shall submit a written request for information (RFI) to the Architect, as to how to proceed. Should Architect not provide written instructions on how to proceed then new materials shall be installed in accordance with industry standards for the existing structure and scope of work for this Contract, otherwise, installation shall be per the requirements set forth by Architect in its written response to the RFI. Regarding sealants, in particular, where Contractor is responsible for replacement of sealants, Contractor is not responsible for rebuilding wall-cladding or other building components in which sealants are applied, but is only responsible for removal of the sealant and installation of new sealant in accordance with industry custom and practice for restoration work.

5. Normal fluctuations in costs of materials, under normal market conditions, shall not cause an increase or decrease in the price of the Work. However, should the cost for materials substantially increase as a result of an unforeseen war, threat of war, acts of war, act of terrorism, a new pandemic or endemic, or other unforeseen force-majeure events as of the effective date of this Agreement, the Contractor shall be entitled to an additive Change Order as compensation for the difference between the original cost and the cost resulting from said unforeseen events. Contractor shall produce invoices to support a request for increase in material charges.

6. At Owner's request, the Work is being performed while the property is being occupied. Contractor will coordinate with the Owner in scheduling the Contractor's Work in such a manner as to minimize the inconvenience to the Owner. Owner acknowledges that installation specifications for certain applications require that the areas being treated remain undisturbed for specific periods of time, and that certain aspects of construction create potentially unsafe conditions; thus, restrictions of access to certain areas of the property will be required during portions of the Work. In such cases, Contractor shall provide reasonable advance notice to Owner, and shall post conspicuous notice and install appropriate restrictive devices around or in areas that require restricted access, including, without limitation, where overspray, dripping, hazardous conditions, or other hazards may occur. Provided Contractor provides conspicuous notification of such conditions / restricted areas, Contractor shall not be responsible or liable for damages to items located or parked within the restricted areas, and shall not be liable for injuries or damages to persons, property, or the Work as a result of unauthorized activity within the restricted areas. Owner specifically agrees that (provided proper notice has been given and appropriate restrictive devices have been employed) Contractor is not responsible for such damages or injuries and agrees to indemnify and hold Contractor harmless against any damages, claims, causes of action, costs and expenses (including attorneys' fees and costs) arising out of or relating to such damages or injuries.

7. When the Contractor's Work, by its nature, involves activities that may result in potential damage, including, without limitation, vibration of the structure or creation of excessive dust, Contractor shall notify Owner, in writing and sufficiently in advance of the work, so that residents/tenants/neighbors can be advised to protect their property and belongings. Once Contractor has notified Owner of such potential damage situations, Owner shall be responsible for advising residents/tenants/neighbors of such potential damage situations, and Contractor shall not be responsible for damages resulting from Owner's failure to so notify residents/tenants/neighbors, or resulting from the failure of residents/tenants/neighbors to protect

their property. Owner specifically agrees that Contractor is not responsible for any such situations and agrees to indemnify and hold Contractor harmless against any damages, claims, causes of action, costs and expenses (including attorneys' fees) arising out of or relating to damages resulting from such Work.

8. The parties enter this agreement with the full understanding that the Project is a restoration project (i.e., not new construction), in which at least some number of unknown and unquantifiable (at this time) conditions could be uncovered, whether large or small in number or cost. Except as specified in the Contract Documents, the Contract Price does not include the repair of such unknown conditions. Contractor shall receive additional compensation for remediation of such unknown conditions. It is also expressly understood by the Owner that, given the Owner's interest in completion of the Work as quickly as practicable, the Owner, either itself or through its Architect, shall give prompt approval of and direction relating to additional work that may be needed as a result of the discovery of such conditions. Owner acknowledges and agrees that if Contractor is delayed as a result of the discovery of unknown conditions or other events outside Contractor's control, Contractor shall be entitled to an extension of time and an additive Change Order for Contractor's job site overhead costs during the delay for delays that are attributable to the Owner, until the delay in Contractor's progress is resolved by the Owner.

9. Contractor shall be responsible for assessment of potential landscaping or plant damage resulting from unavoidable exposure to fumes, overspray and/or residue of materials being used and shall notify Owner that it needs to protect landscaping or plants. Owner understands that although Contractor will take reasonable precautions to avoid damage to landscaping and plants, a restoration project of this nature assumes that some damage and wear and tear is likely to occur. Replacement of landscaping and plants shall be done at Owner's cost and expense unless Contractor failed to notify Owner in advance of the need for Owner to take measures to protect the landscaping or plants.

This Agreement is entered into as of the day and year first above written.

OWNER:

Aquavista of PCB Owners Association BY: Lou Christian, President
Printed name: LOU CHRISTIAN

CONTRACTOR:

_____ BY: Jimmy Boswell
Printed name: Jimmy Boswell
Printed title: Manager