

AGREEMENT BETWEEN ASSOCIATION AND CONTRACTOR

THIS AGREEMENT is made and entered between **GREENWICH ASSOCIATION, INC.**, a Florida corporation not-for-profit, (hereinafter referred to as "Association"), having its principal office at 1470 NE 123rd Street, North Miami, FL 33161 and **Restore Construction Group, Inc.** hereinafter referred to as the "Contractor"), licensed under License #CGC1515037 having its principal office at 2411 SW 58th Terrace, West Park, FL 33023 for concrete restoration, guardrail repairs, painting, and waterproofing and other associated Work in accordance with the Contract Documents hereinafter defined for the property located at 1470 NE 13rd Street, North Miami, FL 33161.

WITNESSETH

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

ARTICLE I
THE CONTRACT DOCUMENTS

- 1.1 The following documents shall comprise the contract documents ("Contract Documents"):
 - A. This Agreement;
 - B. Project scope of work, field notes, and summary, instructions to bidders, plans, details, engineering report, architectural drawings, electrical/security drawings, etc. as Composite Exhibit "A" prepared by O&S Associates, Inc.
 - C. Bid Form for from Contractor dated September 6, 2022 attached hereto as Exhibit "B" (3 pages).
 - D. Proposal 22-210 from Contractor dated September 6, 2022 attached hereto as Exhibit "C" (4 pages)
 - E. Contractor Sample Warranty attached hereto as Exhibit "D" (2 pages)
 - F. Contractor Certificate of Insurance attached hereto as Exhibit "E" (1 page)
 - G. Sample Payment Bond and Performance Bond Forms Exhibit "F" (8 pages)
 - H. Hurricane/Tropical Storm Preparedness Plan as Exhibit "G" (4 Pages)

1.2 The Contract Documents shall be interpreted together and in harmony with one another. However, in the event of a conflict between Exhibits "B-G" (hereinafter the "Contract Exhibits") and pages 1 through 13 of this Contract (hereinafter the "Text of the Contract"), the Exhibits shall control with respect to the scope of work and the means of performance. However, any other conflict between the Text of the Contract and Exhibits "B-F" for items including payment terms, protection of property and responsibility for damages, indemnification, and insurance, the Text of the Contract shall control. In the event of a conflict between the Text of the Contract and any Exhibits, the Engineer's specifications attached as Exhibit "A" shall control.

ARTICLE 2
SCOPE OF WORK

The Contractor will provide all materials, supervision, labor, tools and equipment necessary to complete the Work involving correction of certain conditions delineated in Exhibit "A" in strict accordance with the Contract Documents, together with all plans, details, correspondence and specifications, as specified in writing by the Association's Representative and to perform all other 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 current edition of the Florida Building Code and any local amendments. Notwithstanding the forgoing, Contractor is entitled to reasonably rely on the accuracy and sufficiency of all information, plans, and specifications, furnished by Association, or its Engineer.

ARTICLE 3
TIME OF COMMENCEMENT AND COMPLETION

Upon execution of this Agreement Association shall make payment of \$116,912.42 to Contractor, representing General Conditions items 1.1-1.4 of the Exhibit "B" Bid Form. Upon receipt deposit, Contractor shall promptly apply for permits. The Work shall commence no later than ten (10) calendar days after issuance of the permit or a written Notice to Proceed issued by the Association's Representative (the "Commencement Date"), whichever event is later. The Contract Sum shall increase to the extent Contractor incurs additional costs due to any delay in the issuance of the required permits caused by events beyond Contractor's control subject to Engineer's approval of such additional costs which shall not be unreasonably denied or withheld. The Work shall be substantially complete within ninety (90) calendar days after the Commencement Date and completed and ready for final payment within one hundred fifty (115) calendar days after Commencement Date.

ARTICLE 4
CONTRACT SUM

The Association shall pay Contractor for the performance of the Work as follows:

- a. The total Contract Sum, which includes correction of all of the conditions at all of the location identified in Exhibit "A" shall be three hundred twenty two thousand nine hundred sixty two dollars and forty two cents (\$322,962.42) in accordance with Contractor's bid proposal attached hereto as Exhibit "B". Payment shall be made as set forth below.
- b. The amount set forth above shall be subject to a reduction for any conditions or any locations where Work is not performed and to increase for any conditions or locations in addition to those identified on Exhibit "A", subject to the conditions contained herein.
- c. The Association agrees to pay all fees charged by the City of North Miami, or Dade County for permits in connection with the Work described herein, such payments to be made directly by the Contractor without effect on the established payment schedule. Association shall reimburse the Contractor for the actual costs of each such permit, plus an \$800.00 permit expediting fee.

All prices specified are inclusive of all taxes and licenses. Contractor shall not be entitled to payment for the performance of any quantities of the Work, nor be required to perform and Work in addition to that described in Exhibit "A" unless, prior to performing same, it is approved and the quantities are verified by the

Association's Representative, and the Association and Contractor agree in writing, signed by each of them, to any additional quantities or any additional payment therefor.

ARTICLE 5
PAYMENTS

5.1 In no event shall a written Notice to Proceed be issued by the Association nor any Work performed until a Notice of Commencement has been duly completed and recorded by the Association in accordance with Section 713.13, Florida Statutes and a certified copy has been posted prominently upon the Property and a permit or permits are issued for any Work to be performed, whichever occurs later. Contractor shall confirm the recordation of the Notice of Commencement and posting of the permit prior to performing any work.

5.2 Progress Payments: The Exhibit "B" schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. The Contractor shall submit an application for payment to Association's Representative utilizing the Form G701/G702/G703 Application and Certificate for Payment. As a condition of each progress payment, Contractor shall submit with each Payment Application 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 to the extent the work of such laborers, material suppliers and subcontractors has been approved by the Engineer and paid for by the Association up through the date of the prior progress payment and corresponding partial releases of lien from Contractor and any lienors serving a Notice to Owner to Association (Association shall provide written notice, and a copy of any such Notice to Owner received, to Contractor upon receipt). Upon the foregoing documentation being submitted, the Association's Representative shall issue a certificate of authorization of payment to the Association for the amount approved within ten (10) calendar days of receipt of the fully complete application for payment with reasonably necessary supporting documentation. Upon receipt of the certificate of authorization of payment, the Association shall issue payment of the amount certified, less retention, to Contractor within ten (10) calendar days. All payments shall be reduced by ten (10%) percent which shall be retained by the Association and paid in accordance with Article 6. Notwithstanding the foregoing, Retainage shall not be withheld on the General Conditions items 1.1-1.4 of the Exhibit "B" Bid Form. Fifty (50%) percent of the retained funds held by the Association shall be released to Contractor upon the Work reaching substantial completion.

5.3 Payments may be withheld to the extent of (1) defective Work not remedied, (2) claims or liens filed, despite timely payment therefore from Association (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, despite timely payment therefore by Association (4) failure to provide waivers of lien for all lienors giving notices, despite timely payment therefor from Association, or (5) damage to the Association's property or to the real or personal property of any unit owners or tenants which Engineer has determined to have been caused as a direct result of the negligence of Contractor and in which case a reasonable estimated amount of such damages, as determined by Engineer, shall be withheld from Contractor's payment until such damages are satisfactorily corrected, in the reasonable determination of the Engineer or (6) failure to carry out the Work in accordance with the Contract Documents..

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

5.5 Notwithstanding anything contained herein to the contrary, payment to be made in accordance with the final Application for Payment shall be made in accordance with Article 6.

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5.6 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Association no later than the time of full payment of the Application for Payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and to the extent of payments received from the Association shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Association interests.

ARTICLE 6
FINAL PAYMENT

6.1 Final payment, less the remaining retention, shall be due within ten (10) calendar days after substantial completion of the Work for the building, provided the Work has been fully performed and inspected and accepted by the Association's Representative and any governmental authorities required to inspect the Work, the Association's Representative has issued a Certificate of Substantial Completion, copies of all warranties (if any) from suppliers have been provided and Contractor has complied with the other requirements of this Article 6. All full force and effect warranties shall be provided to Association in exchange for Final Payment, in full, subject to any setoffs or other holdbacks as provided in the Contract, being made to Contractor.

6.2 Final payment, less the remaining retention, shall not be due until the Contractor has delivered to the Association a complete release of all liens and unconditional releases or waivers of lien from all lienors including, but not limited to, all material suppliers, laborers or subcontractors arising out of this Agreement, consent of surety, and a final contractor's affidavit pursuant to Section 713.06(2), Florida Statutes and provided proof that all permits have been closed and the work has obtained final approval from the local building department or any other government agency having oversight and control over the work.

6.3 Final payment may be withheld to the extent of (1) defective Work not remedied, (2) claims or liens filed, despite timely payment therefore from Association for prior payment applications (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, despite timely payment therefore from Association for prior payment applications (4) failure to provide waivers of lien for all lienors giving notices, despite timely payment therefore from Association for prior payment applications (5) damage to the Association's property, or to the real or personal property of any unit owners or tenants which Engineer has determined to have been caused as a direct result of the negligence of Contractor and in which case a reasonable estimated amount of such damages shall be withheld from Contractor's payment until such damages are satisfactorily corrected; or (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.

6.4 No later than five (5) calendar days after issuance of the Certificate of Substantial Completion, the Association's Representative shall issue a punch list and the Association shall release fifty (50%) of the retainage withheld to Contractor. Within ten (10) calendar days of written notification to the Association's Representative that all punch list items have been completed, the Association's Representative shall inspect the punch list items. Payment of the remaining retention shall be made within ten (10) calendar days after the Association's Representative issues a Certificate of Completion of Punch List Items, Contractor has removed temporary facilities from the site, along with construction tools and similar elements; completed clean up in connection with performance of the Work.

6.5 The making of final payment or payment of any retention shall not constitute a waiver of any claims by the Association. The receipt of final payment or payment of any retention in an amount less than the full amount requested shall not constitute a waiver of any claims by the Contractor.

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6.6 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Association can occupy or utilize the Work for its intended use.

ARTICLE 7
ASSOCIATION'S REPRESENTATIVE

7.1 **Jason Borden, PE of O&S Engineering and Architects**, shall be the Association's Representative during performance of the Work and until completion of the Agreement Work and is hereinafter referred to throughout the Agreement as the "Association's Representative." Any reference in any Contract Document to a "Architect" or "Engineer" shall be deemed to mean the Association's Representative. Association shall have the right to designate an alternate representative at any time in writing to Contractor.

7.2 The Association's Representative shall at all times have access to the Work. Forty-eight (48) hours notification to the Association's Representative by the Contractor shall be required for all specified field observations, unless agreed otherwise by the Association's Representative and Contractor.

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 a certificate 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 initial and nonbinding decisions on all claims and disputes between the Association and the Contractor.

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) working days from receipt of written notice to object, or commence to correct and to diligently proceed to complete such Work to the reasonable satisfaction of Association's Representative. The Association's representative and Contractor shall discuss the issues related to the work and attempt in advance to reach an amicable resolution. If they cannot agree, Association Representative, Association and Contractor shall seek a mutually agreeable neutral engineer to review and determine whether the work is defective. Neither party shall be bound by the decision of the neutral engineer and shall retain any rights and remedies available.

7.7 The Parties agree that Pistorino & Alam Consulting Engineers, Inc. and TRC Worldwide Engineering, Inc. cannot be hired in any capacity arising from, relating to, or touching or concerning this Agreement and the Work; and it is further agreed and understood that this provision is an inducement for the Contractor to enter into this Agreement and for Contractor to issue Contractor's Labor and Material Warranties to Association. The provisions of this Paragraph shall survive the termination of this Agreement.

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ARTICLE 8
CONTRACTOR

8.1 Contractor warrants and represents to the Association that it has visited the site of the Work, and that Contract is familiar with local conditions and things that will have a bearing on performance of Contractor's work and costs and is generally familiar with the conditions of the Work area, and the character of the Work.

8.2 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 individuals skilled in the trades and application of materials involved.

8.3 The Contractor shall pay all expenses associated with the Work, whether set forth herein or not. However, the Association shall designate an area, agreeable to Contractor in which the Contractor may store its supply of materials and equipment, locate its administration facilities as well as portable sanitary facilities. It shall be the Contractor's responsibility to maintain such storage area in a safe and orderly fashion. Contractor shall be responsible to fully insure all materials and equipment on the Property. Association will not be liable or responsible for any damages to such materials or equipment, except to the extent of any damages arising from theft or vandalism of such materials. Furthermore, the Association shall make the necessary arrangements to provide electricity and water for use by the Contractor at no additional cost and expense to the Contractor.

8.4 Contractor recognizes that the Work will be performed in the community operated by the Association including units in which owners of those units and their tenants or guests shall continue to occupy and reside in those units and that Contractor must take reasonably appropriate measures to mitigate interference therewith. To the extent any owner or other occupant objects to or otherwise interferes with the Work of the Contractor, Contractor shall provide written notice to the Association and Association's Representative and Association shall promptly take all reasonable actions to avoid any further delay occasioned by such objection or interference.

8.5 The Contractor shall at all times enforce strict discipline and good order among its employees.

8.6 The Contractor warrants to the Association and the Association's Representative that all materials incorporated in the Work will be new unless otherwise specified, and that all Work and materials will be 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 Association and Association's Representative.

8.7 Contractor shall provide notices regarding the work to Association to disseminate to and enforce upon Association members, residents and guests. Contractor shall be liable for any deviation from any laws, ordinances, rules, regulations, and orders of any public authority, only to the extent that such deviation is caused as a direct result of defective Work (i.e. Work which does not conform to the Contract Documents).

8.8 The Contractor shall be responsible for the acts and omissions of all his employees and all subcontractors, their agents and employees and all other persons performing any of the Work under an agreement with the Contractor. The Association shall be responsible for the acts of the Association, unit owners, other contractors employed by the Association, and Engineer which interfere with the Work under this Agreement.

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8.9 The Contractor at all times shall keep the premises reasonably free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work Contractor shall remove, at his sole cost and expense, its waste materials and rubbish from and about the Property as well as its tools and equipment and shall leave the Work "broom clean" or its equivalent, except as otherwise specified.

8.10 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. To the fullest extent permitted by law, the Contractor shall be the primary insurance to defend, indemnify and hold harmless the Association, its officers, directors, agents (including the Association's Representative) and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) to the extent caused by any negligent or intentional acts, omission or material breach of the Agreement by the Contractor, any Subcontractor, any Sub-Subcontractor, any material or equipment supplier, anyone directly or indirectly employed by any of them. The foregoing obligations of the Contractor are in addition to his other obligations under this Agreement. To the extent this indemnification clause does not comply with Chapter 725, Florida Statutes, this provision and all aspects of the Agreement shall be interpreted as the parties' intention for the indemnification provisions and Agreement to comply with Chapter 725, Florida Statutes, as it may be amended from time to time. At no point shall the limits of indemnification for items exceed that which is covered by Contractor's insurance required by this Contract which the parties agree bear a reasonable commercial relationship to the contract. However, nothing in this Section shall limit the amount and coverages in all Contractor policies of insurances. This provision shall survive the termination or expiration of this Agreement.

8.11 The Contractor shall coordinate all of the Work to timely complete the project.

8.12 Contractor shall provide a full time, English speaking on site supervisor for the duration of the project. The on-site supervisor shall be fluent in English. The Contractor's employees shall be fully clothed at all times wearing shirts identifying the Contractor's company.

ARTICLE 9
SUBCONTRACTS

Contractor may subcontract portions of the Work contemplated under this Agreement upon submission and approval of the Association of its proposed subcontractor and all such subcontracts entered into by Contractor or its subcontractors or material suppliers, shall contain a provision referencing this Agreement. 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. All subcontractors shall be licensed and insured, to the extent required by law or covered under Contractor's policy of insurance. Copies of all applicable subcontractor Certificates of insurance shall be provided to the Association upon submission for approval which approval shall not be unreasonably withheld.

ARTICLE 10
TIME

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

10.2 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any other 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 and Association Representative within five (5) days of the event giving rise to the delay and must describe the event and actions taken to minimize the impact thereof. Failure to so request an extension will constitute a waiver of any right for an extension of time. Failure of the Association's Representative to answer any such request for extension of time of Contractor within ten (10) days of such request, shall constitute acceptance thereof by the Association and Association's Representative.

10.3 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. The Contractor acknowledges that in specifying the date of substantial completion that it has taken into account rain days based on national weather data. This "no damage for delay" clause will encompass any damages for delay or disruption even if the Contractor completes the Work in a timely fashion in accordance with this Contract. This "no damage for delay" clause shall not apply in the event of interference by the Association, Unit Owners, the Engineer, or any of Association's respective agents, employees or contractors.

Notwithstanding anything to the contrary, it is specifically acknowledged, understood and agreed that additional considerations are necessitated due to the current Supply Chain Crisis and COVID pandemic; including, without limitation, governmental and quasi-governmental agencies delays; suspensions and interruptions of work and/or services that are in place or scheduled; as well as the restrictions on the working environment, construction means and methods; material shortages, material price escalations and delays; and size and proximity of work forces and worker productivity that are expected to continue as a result thereof. Accordingly, the impacts of the current Supply Chain Crisis, COVID pandemic, or any other pandemic(s), viruses, variant, declared National, State and/or Local Emergencies, and supply chain issues shall result in an increase in the Contract Sum and Time, and shall entitle Contractor and/or its subcontractors to a claim for adjusted or additional time, compensation, and general conditions to the extent an increase in the Contract cost and time required to perform the Work is actually incurred (without any additional charge for profit) as a direct result of the impacts of the ongoing Supply Chain Crisis, COVID pandemic, or any other pandemic(s), viruses, variant, declared National, State and/or Local Emergencies, and supply chain issues. Any increase in Contract Cost and Time shall be subject to review of reasonable supporting documentation from Contractor and approval of Association's Representative, which approval shall not be unreasonably withheld or denied.

10.4 It is mutually agreed between the parties that time for payment and performance of the Work is of the essence of this Contract. If despite Association making all full and timely payments required under this Agreement, the project is not completed within the time and in the manner specified in this Contract (hurricane or storm delays notwithstanding or other reasonable delays such as additional work or inability to obtain materials or other reasons beyond the control of Contractor), due to no fault of the Association, Unit Owners, the Engineer, or any of their respective agents, employees or contractors for which an extension of time is authorized under this Agreement, it is agreed that from the compensation otherwise to be paid to the Contractor, the Owner may retain the sum of Two Hundred Fifty Dollars (\$250.00) per day for each day thereafter, that the work remains uncompleted which sum Association and Contractor agree represents the damages the Association will have sustained per day for the failure of the Contractor to complete the project within the time stipulated. Requests for extensions due to delays must be made in writing indicating the reason for such delay and shall indicate the number of days lost due to such delay as set forth in Article 10.2. The parties agree that this sum is not a penalty.

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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 including cordoning off areas where Work is being performed, and shall adequately post signs in the construction areas. Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) all the materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. Contractor shall comply with all applicable 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 to the extent caused 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 LIABILITY INSURANCE

12.1 The Contractor shall purchase and maintain such insurance as set forth in Exhibit "E".

12.2 The Association shall be added as a named additional insured in all policies required to be maintained hereunder as set forth in Exhibit "E." Contractor's insurance shall be primary and non-contributing to any policy of insurance held by Association. Contractor's policies of insurance shall contain a Waiver of Subrogation as to the Association. 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. 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.

12.3 The Contractor and Association waive claims against each other for consequential damages arising out of or relating to this Agreement. This provision shall survive termination of this Agreement.

ARTICLE 13
CORRECTION OF WORK AND WARRANTY

13.1 See Exhibit "D".

ARTICLE 14
SHOP DRAWINGS

14.1 Contractor shall review and submit to the Association's Representative for review and approval, drawings, product data, samples and similar submittals prior to the commencement of the Work in such sequence as to cause no delay in the Work.

14.2 By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that he has generally checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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14.3 The Contractor shall be relieved of responsibility for its reasonable reliance on deviations from requirements of the Contract Documents by the Association's Representative's approval of shop drawings, product data, samples or similar submittals. The Contractor shall be relieved of responsibility for reasonable reliance in errors or omissions in shop drawings, product data, samples or similar submittals by the Association's Representative's approval thereof.

14.4 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 15
INSTRUMENTS OF SERVICE

15.1 Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Engineer and the Engineer's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

15.2 The Engineer and the Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Engineer's or Engineer's consultants' reserved rights.

15.3 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer's consultants.

ARTICLE 16
CHANGES IN THE WORK

Any changes in the Work or any adjustment in the Contract Sum or the Agreement time shall only be made upon written change order executed by the Association and Contractor. Contractor shall not be required to proceed with any Work, touching or concerning any such changes in the Work without obtaining a written change order. If Contractor proceeds with such Work without obtaining a written change order it shall be assumed that Contractor has performed such Work at no additional charge. The requirement for written change orders under this Article cannot be waived.

ARTICLE 17
TERMINATION BY THE CONTRACTOR

If the Association's Representative fails to issue a timely Certificate of Payment as set forth in Article 5.2 after an application through no fault of the Contractor, or if the Association fails to make timely payment thereon as set forth in Article 5.2, or is otherwise guilty of a material breach of any provision of the Contract Documents then the Contractor may, after fifteen (15) calendar days written notice to the Association and the

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Association's Representative identifying the basis relied upon in making such determination such material breach, without prejudice to any right or remedy, should Association fail to commence and continuously cure the applicable material breach within the fifteen (15) day cure period, Contractor may terminate this Agreement and recover from the Association payment for all Work executed and for any proven loss for Work performed and on any materials, equipment, tools, and construction equipment and machinery, including a reasonable profit in the amount of twenty percent (20%).

ARTICLE 18
TERMINATION BY THE ASSOCIATION

18.1 If the Contractor cannot satisfy the conditions and obligations imposed by the Contract Documents, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach 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 provide the Contractor a fifteen (15) day written notice identifying the basis relied upon in making such determination. Without prejudice to any right or remedy to the Association, should Contractor fail to commence and continuously work cure the applicable material breach within the fifteen (15) day cure period, Association may take possession of the site and all of Contractor's equipment, tools and materials, 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 Association's right to claims for any additional damages, including but not limited, to delay and consequential damages.

18.2 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 additional damages including but not limited to delay and consequential damages. This obligation for payment shall survive termination of this Agreement.

18.3 The Association may, at any time, terminate the Contract for the Association convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work in the amount of twenty percent (20%).

ARTICLE 19
TRANSFER OF LIEN

In the event any liens should be filed against the Property by any subcontractors, laborers 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 seven (7) calendar 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 as surety licensed to do business in the State of Florida in accordance with the provisions of Section 713.24, Florida Statutes, and its successors.

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ARTICLE 20
PAYMENT AND PERFORMANCE BOND

The Contractor, upon request of the Association, at the Association's expense, shall furnish the Association before commencing any of the Work required under this Agreement, a Performance Bond, and an unconditional Payment Bond, in the form attached hereto as Exhibit "F", in the amount of the Contract Sum and shall be billed to the Association at a rate of 3% of the total Contract Sum, as modified by change orders. The Payment and Performance Bond shall be furnished by a surety licensed in the State of Florida that is satisfactory to Association, naming the Association as obligee and conditioned that the Contractor shall perform all Work required by the Contract Documents in a satisfactory and Workmanlike manner and pay all obligations in accordance with Florida law. The Association shall comply with any and all requirements imposed by the surety which may include, without limitation, the Association providing the surety with proof of its ability to pay for the Work. In addition to the Association having no claim for consequential damages arising out of or relating to this Contract, the Association shall also have no claim against the bond surety for direct damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from material delays beyond the reasonable control of Contractor. The surety shall only cover the Contractor Warranty for a maximum period of one (1) year from the date of Substantial Completion.

ARTICLE 21
ATTORNEY'S FEES

In connection with any litigation including pre-suit, or 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 Miami Dade County, Florida.

ARTICLE 23
SUCCESSORS AND ASSIGNS

The Association and the Contractor each binds himself, his 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 the 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 him hereunder, without the previous written consent of the Association.

dm
JC

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 & MUTUAL DRAFTSMANSHIP

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. This Agreement is the joint product of the parties and each provision has been subject of the mutual consultation, negotiation and agreement of such parties and shall not be construed for against any party hereto.

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 Association's Representative, 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, and addressed as follows (or to such other address as any party may specify by notice to all other parties as aforesaid):

For Association:
Greenwich Association, Inc.
1470 NE 123rd Street
North Miami, FL 33161

For Contractor:
Restore Construction Group
2411 SW 58th Terrace,
West Park, FL 33023

With a copy to:

Hollander Goode & Lopez, PLLC
314 South Federal Highway
Dania Beach, FL 33004

With a copy to:

Ronald E. Kaufman, Esq.
3399 Ponce De Leon Blvd, Suite 202
Coral Gables, FL 33134

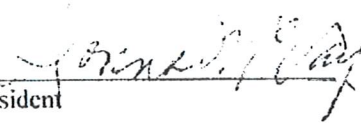
For Association's Representative:
Jason R. Borden, PE
O&S Associates, Inc.
2500 Hollywood Blvd, Ste 212
Hollywood, FL 33020

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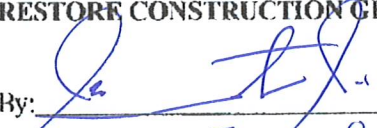
[SIGNATURE PAGES FOLLOW]

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

GREENWICH ASSOCIATION, INC.

By: Donna McVay 
 Donna McVay, President
 Date: 1/23/2023

RESTORE CONSTRUCTION GROUP, INC.

By: 
 Print Name/Title: Juan Castro Principal
 Date: 02/1/2023