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**MARK HANCOCK DEVELOPMENT CORPORATION  
 TRADE CONTRACT AGREEMENT**

**THIS AGREEMENT** is effective as of this 29th day of November, 2007 and is hereby made and entered into by and between Mark Hancock Development Corporation, an Arizona corporation (hereinafter "Contractor"), and Flynn's Floor Covering, an Arizona Inc (hereinafter "Trade Contractor").

**SECTION I: DEFINITIONS**

CONTRACTOR: Mark Hancock Development Corporation  
 6607 N. Scottsdale Road, Suite HI00  
 Scottsdale, Arizona 85250-4421  
 Office: (480) 3674300  
 Fax: (480) 367-4350

TWE Name: Flynn's Floor Covering, Inc. A  
 CONTRACTOR address: 4738 East Ingram  
 : City, State, Zip: Mesa AZ 85205

**SECTION 2: SCOPE OF TRADE CONTRACTOR'S WORK**

2.1 This Agreement pertains exclusively to Lots  
 63,64,65,67,68,70,71,72,73,74,75,76,78,79,80,81,82,83,84,85,86,91,95,96,97  
 98,99,100,101,102,104,105,106,108,111,112,113,114,115,116,117,118,120,121,122,124,125,126,127, and 128  
 of Parcel 15116 of Cortile of Palm Valley, otherwise known as Harmony Subdivision, located in the City of Goodyear, State of Arizona.

2.2 Trade Contractor, as an Independent Contractor, shall furnish, at its own cost and expense, all supervision, labor, equipment, power, supplies, materials, machinery, tools, cartage, insurance, services and other facilities of every kind and description (hereinafter "Labor and Materials") required for the prompt and efficient execution of the Trade Contractor's work as specifically set forth and identified on Addendum "A-1" attached hereto and incorporated herein by reference (hereinafter "Work").

2.3 Trade Contractor shall perform all Work in strict compliance with the terms of this Agreement, the addenda, all exhibits and attachments hereto. all plans, draai11:s. specifications and schedules applicable hereto any modifications hereto provided to Trade Conti-actor by Contractor and Trade Contactor's proposal (hereinafter collectively "Contract document:"). All Contract Documents are by reference incorporated herein and made part of this Agreement.

2.4 Trade Contractor shall perform all Work in strict compliance with all applicable laws, statutes, ordinances, rules and regulations, whether Federal, State or local, building codes, workmanship standards, manufacturer's requirements and OSHA regulations. Trade Contractor is solely responsible to insure that its Work is performed in strict compliance with the foregoing. Trade Contractor shall indemnify, defend and hold Contractor harmless from any and all damages, costs, expenses or fees incurred as a result of Trade Contractor's failure to comply herewith.

2.5 Trade Contractor shall, at its own cost and expense, obtain all necessary licenses and insurance of every kind which may be required by any governmental authority and shall pay all taxes (excluding sales tax), licenses and fees of every kind that may be imposed by any governmental authority on the Labor and Materials furnished by Trade Contractor pursuant to this Agreement.

2.6 Trade Contractor shall not use, install, implement or incorporate an Exterior Insulation and Finis11 System (EIFS) into the Project implement or incorporate said system into the Project or its Work, Trade Contractor shall indemnify, defend and hold Contractor harmless from any loss, damage, costs or expenses related in any way 6om Trade Contractor's use, installation, implementation or incorporation of said system into the Project or its Work.

2.7 For purposes hereof, the Project is the total construction of which the Work may be the whole or part.

### **SECTION 3: CHANGE ORDERS**

3.1 Contractor hereby reserves its right to require changes in, deviations from, additions to, and omissions from the Work herein contracted, and the Contract Price shall be adjusted accordingly. Before proceeding with any change, deviation additions or omission, the Trade Contractor shall first obtain written authorization from the Contractor, which authorization will state the amount by which the Contract Price will be adjusted, if any. In the event any changes are made in said Work, neither cost nor credit shall be allowed Trade Contractor on the Contract Price unless the additional costs or credit are mutually agreed upon in writing by Contractor and Trade Contractor prior to the commencement by Trade Contractor of work on such changes.

### **SECTION 4: CONTRACT PRICE; MEASUREMENT AND PAYMENT TERMS**

4.1 In consideration for the full and faithful performance of the Work, Contractor agrees to pay Trade Contractor the sum set forth in the payment schedule attached hereto as Addendum "A-1" (hereinafter "Contract Price") in accordance therewith. Said sums shall be paid in current funds, subject to additions and deductions for changes as set forth herein.

4.2 Payments shall be made in compliance with A.R.S. § 32-1129. It is understood and agreed that the Contract Price shall not be increased or decreased except in accordance with the provisions of this Agreement, and excepting those increases in the Contract Price made pursuant to the provisions of this Agreement, Trade Contractor shall be liable for and indemnify, defend and hold Contractor free and harmless from all other increases in the cost of the Work to be performed by Trade Contractor.

4.3 In order to receive payment, Trade Contractor shall submit to the Contractor's office on or before the date designated by Contractor, an invoice, covering the value of the Work completed to the satisfaction of the Contractor during the current pay period. If said invoice is not timely delivered by the Trade Contractor on the form provided or as specified herein payment will be withheld until such time as Trade Contractor submits its executed invoice in compliance with this Agreement.

4.4 At the time of submission for payment of invoices or completed and approved PO'S, the Trade Contractor shall furnish the Contractor with fully executed Conditional Waivers and Releases on Progress Payments, similar to that attached hereto as Attachment B- 1, for itself and fully executed Unconditional Waivers and Releases on Progress Payments, similar to that attached hereto as Attachment B-2, from each of its material suppliers/creditors or sub trades which filed and served Preliminary Twenty-Day Notice, in an amount equal to the payment(\$ received from Contractor from the immediately preceding payment period.. All payments to Trade Contractor will be by joint check with any party having issued a Preliminary Twenty-Day Notice until or unless Contractor has been provided with Unconditional Waivers and Releases on Final Payment similar to Attachment B- 4.negating any and all Preliminary Twenty-Day Notices issued. .If Unconditional Waivers are not timely received, Contractor may seek reimbursement of the prior payment from Trade Contractor or withhold future payments due Trade Contractor from any source whatsoever, until such time as the Unconditional Waivers are received

4.5 No payment shall be made from Contractor to Trade Contractor until such time as Trade Contractor has submitted to Contractor an executed copy of this Agreement, all certificates of insurances and endorsements required herein, and, if required, a list of all major suppliers and Trade Contractors.

4.6 In addition, Trade Contractor shall also submit to Contractor, if Contractor shall so require, any other documents including, but not limited to, payroll affidavits, invoices, bill, receipts and/or vouchers which verify that all indebtedness for the Labor and Materials used in performance of Work has been fully paid by Trade Contractor.

4.7 Provided that Trade Contractor is not in default under this Agreement, that Trade Contractor has complied with all of the provisions of this Section, and that Contractor approves the invoices and other documents submitted by Trade Contractor, Contractor agrees to pay Trade Contractor the amounts requested in the invoice on the next scheduled payment date.

4.8 Contractor may decline to approve and certify an invoice or portion thereof for:

- (a) Unsatisfactory
- (b) Defective construction work or materials;
- (c) Disputed work or materials;
- (d) Failure to comply with other material provisions of this Contract Agreement;
- (e) Third party claims filed or reasonable evidence that a claim will be filed;

(f Failure of Trade Contractor, or any of its Trade Contractors or suppliers, to make timely payment for labor, equipment or materials;

- (g) Damage to Contractor; and/or

(h Reasonable evidence that the construction contract cannot be completed for the unpaid balance of Contract Agreement sum ) or a reasonable amount of retention.

4.1 Any payment made hereunder prior to total completion of Trade Contractor's Work and acceptance thereof by Contractor shall not be construed as evidence of acceptance of any part of said Work or the quality thereof. All sums received by Trade Contractor from Contractor under this Agreement are received by Trade Contractor in trust for the express use and purpose of paying in full all Labor and Materials furnished to Trade Contractor in the performance of this Agreement. No title to any payment, or any part of it, shall vest in Trade Contractor or be used for any other purpose, until Trade Contractor has fnt paid in full all Labor and Materials furnished as of the date of the invoice to Trade Contractor by all persons who may have supplied Labor and/or Materials used in the Work described herein.

4.1 Trade Contractor shall furnish, if so requested, sworn affidavits listing all sub-Trade Contractors and suppliers from whom Trade Contractor has purchased or will purchase labor or materials to be used in the performance of the Work. In the event any such sub- Trade contractor or supplier files a lien on said property, Trade contractor shall within five (5) days of receipt of notice from Contractor cause the effect of any such lien to be removed from said property and any legal proceedings relating thereto to be dismissed. In the event Trade Contractor shall fail to do so, Contractor may, but does not have the obligation to, take any action it may deem appropriate to cause any lien to be removed and/or action dismissed and the cost thereof, together with reasonable attorney's fees, shall be immediately due and payable to Contractor from Trade Contractor or taken from any and all funds due Trade Contractor from any source whatsoever.

4.1 The terms of payment herein shall not make it incumbent on the Contractor to make payments in an amount that would leave insufficient balance to satisfy all obligations of the Trade Contractor for labor, equipment, materials and otherwise, furnished or to be furnished by it under this Agreement.

4.1 Payment to Trade Contractor constitutes release of claims by Trade Contractor up to and including the period oftime covered by such payment, unless the Contractor is notified of specific exceptions in writing, prior to payment.

In the event of a claim or disputed change order, or as otherwise deemed necessary by Contractor or Omer, Trade Contractor's financial records relating to said claim or disputed change order shall be available to Contractor for audit or review.

4.14 Contractor shall have no obligation or duty to pay any invoice submitted by Trade Contractor to Contractor more than six (6)months after Trade Contractor has substantially completed the Work.

## SECTION 5: COMMENCEMENT OF WORK; DEFAULT

5. Trade Contractor agrees to keep itself thoroughly informed as to the progress of the job. commence performance under this contract within five (5) days after notification by Contractor, diligently perform the Work without interruption and complete the Work covered by this Agreement according to the schedule established by Contractor.

5.2 The Project and Work schedules shall be kept and adjusted by the Contractor as reasonably necessary as set forth in Addendum A.

5. In the event the Trade Contractor fails to comply or becomes disabled from complying with the provisions herein as to the character or time of performance and defaults hereunder and said default is not connected within twenty-four (24j hours after notice by the Contractor Lo the Trade Contractor, the Contractor may terminate his contract and, by contract or otherwise, without prejudice to any other right or remedy, take over and complete the Work at the expense of the Trade Contractor. or without taking over the Work, may furnish the necessary materials and equipment. andior eniploy the labor necessary to remedy the situation at the expense of the Trade Contractor. If the Contractor takes over the workpursuant to this Section. it is specifically agreed that the Contractor may take possession of the premises and all materials, tools and equipment of the Trade Contractor at the site for the purpose of completing the Work covered by this Agreement. In the

event the cost to Contractor of completing the Work exceeds the balance due on this contract, Trade Contractor shall pay the difference to the Contractor or the Contractor may obtain the difference from any and all funds due Trade Contractor from any source whatsoever.

#### Exhobot 10.8 - Page - 3

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5. If the Trade Contractor deems that surfaces or work to which its Work is to be applied or affixed is unsatisfactory or  
4 unsuitable to permit actual and proper performance and installation of Trade Contractor work, written notification of said condition shall be given to the Contractor, otherwise no consideration will be given to claims for extra compensation or non-responsibility in connection therewith. Contractor specifically relies on Trade Contractor's skill, knowledge and expertise for all aspects of Trade Contractor's scope of work, including evaluation and acceptance of all prior work completed by other tradesmen necessary to permit Trade Contractor to perform Trade Contractor's scope of work. Any deficiencies, discrepancies or any other conditions that will prevent Trade Contractor from completing Trade Contractor's scope of work in a proper manner shall be immediately communicated to Contractor in writing.
5. With particular regards to Section 18.20 of this Agreement, Trade Contractor agrees to provide every item and perform  
5 every operation necessary and/or properly incidental to comply with the Contractor's schedule.

#### SECTION 6: REMEDIES

6. Should the Trade Contractor at any time be adjudged bankrupt or become insolvent, refuse or neglect to supply a sufficient  
1 number of properly skilled workmen or a sufficient quantity of materials of proper quality, fail in any respect to prosecute the Work covered by his Agreement with promptness and diligence, or fail in the performance of any of the agreements herein contained or related hereto, the Contractor may at his option withhold payment to the Trade Contractor until there has been compliance with the terms hereof and/or after one (1) business day notice to the Trade Contractor, provide for such labor and materials, and deduct the costs thereof from any funds then due or thereafter to become due to the Trade Contractor, to finish the Work and in case of such termination of this Agreement by said Contractor, said Trade Contractor shall not be entitled to receive any further payment under this Agreement until said Work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses, including twenty percent (20%) overhead and profit incurred by the Contractor in finishing the Work, such excess may be paid by the Contractor to the Trade Contractor but if such expenses shall exceed such unpaid balance, then the Trade Contractor shall pay the difference to the Contractor or the Contractor may withhold the difference from any and all funds due Trade Contractor from any source whatsoever.
6. The expense incurred by the Contractor as herein provided, either for furnishing materials or for finishing the work and any  
2 damages incurred by such default shall be chargeable to and paid by said Trade Contractor and the Contractor shall have a lien upon Trade Contractor's materials, tools and appliances and the right to take possession of aforesaid materials, tools and appliances, or any unpaid balance due Trade Contractor for any other work whatsoever to secure the payment thereof.
6. The Trade Contractor will cooperate with the Contractor and the Trade Contractors whose work might interface with the  
3 Trade Contractor's Work and will participate in the coordination of such interface as required, specifically, noting and advising the Contractor of any interference. The Contractor, however, will not be liable to the Trade Contractor for any delays in schedule work to be performed by the Trade Contractor or any damages arising from such delays. Trade Contractor and Contractor and Contractor agree that if the Trade Contractor fails to perform within the time specified on the progress schedule in use at the project site that damages will occur to the Contractor but that such damages while capable of calculation are not capable of being specifically known at this time. Therefore, in lieu of proof of such damages, Trade Contractor and Contractor agree that a reasonable sum for damages (and not as penalty) is the sum of \$250 per calendar day in excess of the time allocated for the Trade Contractors Work and that such shall constitute liquidated damages agreed to. Liquidated damages shall not apply if a schedule is not specifically identified and set forth in Addendum A.
6. All rights and remedies of Contractor hereunder are cumulative and in addition to those at law or in equity, and the

4 exercise of any one or more thereof by Contractor shall not be construed to constitute a waiver of any others. A waiver by Contractor of any breach or default on the part of the Trade Contractor shall not be construed to constitute a waiver of any other breach, or default on the part of the Trade Contractor.

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**Exhibit 10.8 - Page - 4**

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## **SECTION 7: CONTRACTOR'S LICENSE**

7.1 Trade Contractor shall be licensed and regulated by the Arizona Registrar of Contractors. Any questions concerning a contractor may be referred to the Registrar.

7. Trade Contractor shall maintain its contractor's license as required by law and shall keep itself fully informed of all Federal and State laws, City and County ordinances, codes and regulations which affect those employed on the Project the materials to be used, or the conduct of the work including the Arizona Registrar of Contractor's Minimum Workmanship Standards. Further, Trade Contractor shall complete the work in strict accordance with such laws, ordinances, codes, standards and regulations. If the Contract Documents do not conform with the requirements of the above specified authorities, the requirements of such authorities shall prevail and the work shall be completed by Trade Contractor in conformance with such requirements, and no additional compensation shall be allowed therefore, with the exception that Trade Contractor shall be reimbursed for any additional work resulting from any change in the law, ordinance, code or regulation, (excluding labor union agreements) formed or modified after the date of this Agreement.

Trade Contractor agrees to comply with federal and state immigration and employment verification laws and will indemnify Contractor for any liability arising from any failure by Trade Contractor to comply with applicable laws, including attorney's fees and costs, litigation costs, consequential damages, incidental damages, and lost profits suffered as a result.

## **SECTION 8: WARRANTY**

Trade Contractor warrants its Work against all resulting damages, deficiencies and defects in materials and/or workmanship and agrees to satisfy such warranty obligations for a period of two (2) years from the date of issuance of a Certificate of occupancy from the applicable governmental entity without cost to the Owner or the Contractor. This warranty shall be in addition to all other warranties of the Contractor and any and all obligations imposed by law.

## **SECTION 9: CORRECTION OF WORK**

9. Upon written notice from the Contractor at any time prior to completion of the Work or during the warranty period described in Section 8 above, Trade Contractor agrees to repair and replace, at its sole cost and expense, any work or materials which may be defective to the acceptance and satisfaction of Contractor and any damage to property resulting from Trade Contractor's Work. In addition, during the warranty period and immediately following receipt of written notice from Contractor, Trade Contractor shall proceed with those repairs and replacements necessary to avoid further damage or loss of use of the Project premises or any part thereof resulting from the Work performed by Trade Contractor.

9.2 If Trade Contractor shall fail to commence the correction of such damages, defects and/or deficiencies within forty-eight (48) hours of receipt of notice from Contractor, Contractor may without further notice provide the labor and materials necessary to correct said damages, defects and/or deficiencies and Contractor may deduct the cost thereof from any payment then or thereafter due Trade Contractor from any source whatsoever. In the event there are not sufficient funds to satisfy such deduction, Trade Contractor shall reimburse Contractor for such cost immediately upon receipt of written demand from Contractor, together with interest thereon at the rate of eighteen percent (18%) per annum, until paid.

## **SECTION 10: DAMAGE TO EQUIPMENT AND MATERIALS**

10. Trade Contractor shall protect from damage, loss or theft all materials and equipment of others used by it in the performance of the Work. Any such equipment or materials damaged, lost or stolen shall be replaced at Trade Contractor's sole expense. Trade Contractor shall use reasonable care to protect from damage the equipment, materials and work of Contractor or other Trade Contractors and shall repair or replace upon demand any such equipment, material or work damaged by the negligence or willful misconduct of Trade Contractor or any agent, employee or Trade Contractor of Trade Contractor. Trade Contractor shall defend, indemnify, and hold harmless Contractor from and against any and all claims, losses, damages, judgments, liabilities, expenses, costs and fees arising out of or relating to the use of materials and equipment of others, including Contractor, by Trade Contractor or any of its employees, agents or independent contractors.
10. Should any construction equipment and/or material, regardless of ownership or possession, be involved in an occurrence, it will be the right and duty of the Contractor to collect and store all such equipment or material in a safe and secure place for no more than seven (7) days after which the equipment and/or material will be formally released by the Contractor's claims adjustment personnel representing the Contractor's insurer.
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**Exhibit 10.8 - Page - 5**

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**SECTION 11: INDEMNIFICATION**

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11. Trade Contractor shall with respect to all such work which is covered by or incidental to this Trade Contract Agreement and the Work indemnify, defend and save Contractor and Owner harmless from and against any and all claims, debts, demands, damages (including direct, liquidated, consequential, incidental, or other damages), judgments, awards, losses, liabilities, interest, attorney's fees, costs, and expenses of whatsoever kind or nature at any time arising out of any failure of Trade Contractor to perform any of the terms and conditions of this Contract or which are in any manner directly or indirectly caused or occasioned by, or contributed to, by any act, omission, fault or negligence; whether active or passive, of Trade Contractor or anyone acting under his direction or control, or on his behalf in connection with or incident to work, even though the same may have resulted from the joint, concurring or contributory act, omission or negligence whether active or passive, of Contractor, Owner or any other person, unless the same be caused by the sole negligence or willful misconduct of Contractor, or Contractor's agents, servants or independent contractors who are directly responsible to Contractor. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons, including agents and employees of Contractor, Owner and Trade Contractor, and damage to any property of Contractor, Owner and Trade Contractor, and shall extend to any similar obligations of Contractor undertaken by it under the General Contract with respect to the Work hereunder. Trade Contractor will on request and at his expense defend any action, suit or proceeding arising hereunder and shall reimburse and pay Contractor for any loss, cost, damage or expense (including legal fees) suffered by it hereunder.
11. In the event that Trade Contractor shall fail to pay on demand any amounts claimed to be owed by Trade Contractor to Contractor as a result of the indemnification provisions contained herein, Contractor may set off the amounts so owed by Trade Contractor against any amounts owed by Contractor to Trade Contractor, from any source whatsoever, whether as progress payments, final payment or otherwise.
11. In the event that Trade Contractor shall employ the services of a sub-Trade Contractor, Trade Contractor shall require each sub-Trade Contractor to enter into a written agreement containing provisions similar to those set forth in Sections 8, 11 and 12 in favor of Contractor to the fullest extent permitted by law.

**SECTION 12: INSURANCE**

12. Trade Contractor agrees to secure and maintain, at its own expense, insurance of the types and in the amounts as set forth in the Insurance Addendum attached hereto as Addendum "C".
12. By requiring insurance herein, Contractor does not represent that coverage and limits will necessarily be adequate to protect Trade Contractor and such coverage and limits shall not be deemed as a limitation on Trade Contractor's liability under the indemnities granted to Contractor in this Agreement.



12. Trade Contractor shall obtain an endorsement provide that any and all insurance coverage as is afforded under Trade Contractor's Commercial General Liability policy and naming Contractor as an additional insured shall be primary insurance as respects Contractor and that any other insurance maintained by Contractor shall be excess and non-contributing with the insurance required under this Section and Addendum "C".

12.4 NO ENDORSEMENT LIMITING OR EXCLUDING 4 RE(QUIRET) COVER4GE IS PERMITTED.  
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12. In the event that Trade Contractor shall employ the services of a sub-Trade Contractor, Trade Contractor shall require each sub-Trade Contractor to enter into a written agreement containing provisions similar to those set forth in this Section and the Insurance Addendum in favor of Contractor including, but not limited to, naming Contractor and Owner as an additional insured on the sub-Trade Contractor's required insurance policies and that sub-Trade Contractor's policy shall be primarily with Contractor's insurance shall be excess and non-contributing with the insurance required under this Section and Addendum "C".

#### **SECTION 13: PERFORMANCE BOND AND PAYMENT BOND**

Contractor shall have the right, but not the obligation, to require Trade Contractor to furnish bonds covering the faithful performance of this Agreement and the payment of all obligations arising hereunder. Any such bond shall be issued by a bonding company acceptable to Contractor and Contractor's insurance and insurance consultants. The premium for bonds shall be included in the Trade Contractor's price for the Work and shall be paid for by Trade Contractor as additional money in Trade Contractor Price.

**Exhibit 10.8 - Page - 6**

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#### **SECTION 14: TERMINATION**

14. In addition to the right of Contractor to terminate this Agreement upon a default by Trade Contractor as provided in Section 5 above, Contractor may terminate this Agreement and take possession of the site and all materials, equipment, tools, construction equipment and machinery owned by Trade Contractor, and may finish the work by whatever method Contractor may deem appropriate, in the event that Trade Contractor shall be adjudged bankrupt, or if Trade Contractor shall make a general assignment for the benefit of its creditors, or if a receiver is appointed by reason of the insolvency of Trade Contractor, or if Trade Contractor shall persistently or repeatedly refuse or fail, except in case for which extension of time is provided by Contractor, to supply enough properly skilled workmen or proper materials, or if Trade Contractor fails to make prompt payments to its sub-Trade Contractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or order of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of this Agreement or any of the Contract Documents. Upon completion of the Work, all tools, equipment and unused materials shall be returned to Trade Contractor.

#### **SECTION 15: INDEPENDENT CONTRACTOR**

15. Trade Contractor warrants that it is an Independent Contractor within the purview of the Internal Revenue Code, Federal Social Security Act, and any and all other applicable State or Local laws, ordinances, rules and regulations, and is solely responsible for all payroll taxes, deductions, withholdings and contributions required by such laws, ordinances, rules and regulations. Trade Contractor hereby releases and holds Contractor harmless from any and all claims, demands and losses resulting therefrom.

#### **SECTION 16: DISPUTE RESOLUTION**

16. Any dispute or claim between Contractor and Trade Contractor shall be subject and resolved pursuant to the Arbitration Addendum attached hereto as Addendum "D" and incorporated herein by this reference.

16.2 Trade Contractor hereby waives its right to a jury trial.

16. Trade Contractor agrees to participate in good faith in any alternative dispute resolution (ADR) proceedings between a homeowner or homeowners and/or the homeowners' association and Contractor for claims related to the design, construction and/or performance of the development, including individual lots and common areas.

#### **SECTION 17: STORM WATER COMPLIANCE; DUST CONTROL; ENVIRONMENTAL COMPLIANCE**

17. Trade Contractor shall comply with Maricopa County Dust Control, Air Quality and Track-out regulations and requirements and with Contractor's Environmental Protection Plan ("EPP"), all applicable permits ("ZP Permits"), and Contractor's Environmental Compliance Guidelines ("EP Guidelines"). Trade Contractor shall implement the Best Management Practices set forth in the EPP for any and all work that it performs on the jobsite. A copy of the EPP, Permits, and Guidelines are available at Contractor's construction office. Contractor shall be entitled to recover from Trade Contractor all fines, fees, expenses, and other penalties assessed by any governmental body due to Trade Contractor's violation of the EPP, Permits, Guidelines, or other obligations herein.

17. Trade Contractor hereby agrees to indemnify, defend, and hold harmless Contractor from and against any and all claims, damages, attorneys' fees, expenses, or liabilities of any type or nature, including without limitation, any and all fines or other penalties: civil or criminal, arising out of any violation of Maricopa County Dust Control, Air Quality and Track-out regulations and requirements, the SWPPP, SW Permits, SW Guidelines, EPP, EP Permits, EP Guidelines, or any of Trade

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#### **Exhibit 10.8 - Page - 7**

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17. Trade Contractor acknowledges that failure to adhere to the requirements of the SWPPP, SW Permits, SW Guidelines, EPP, EP Permits, or EP Guidelines constitutes a material breach of this Contract and Contractor may, without prejudice to any other right or remedy, remove Trade Contractor from the jobsite, terminate this Agreement, and retain a separate trade contractor to complete Trade Contractor's obligations under this Agreement ("the Completion Trade Contractor"). In the event of termination under this Section Trade Contractor shall not be entitled to receive any further compensation or payment unless and until Trade Contractor's Work is completed by the Completion Trade Contractor.

#### **SECTION 18: SAFETY**

18. Trade Contractor shall take all reasonable safety precautions with respect to the Work, shall comply with all safety measures initiated by Contractor and with all applicable safety Laws, including the Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969.

18. Trade Contractor shall provide a written report to Contractor of any injury at the job site to any of Trade Contractor's employees, Trade Contractor's Subcontractors or the general public within twenty-four (24) hours of such injury.

18. Trade Contractor shall be responsible for initiating, maintaining and supervising all of Trade Contractor's in connection with the performance of the Work. The Trade Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- a) employees on the Project and other persons who may be affected thereby;
- b) the Work and materials and equipment to be incorporated therein; and
- c) other property at the site or adjacent thereto.



18. Trade Contractor shall indemnify, defend and hold harmless Contractor and the other Indemnified Parties (defined below) for, from and against claims and losses by fines, penalties or corrective measures resulting from acts or omissions by Trade Contractor (or Trade Contractors Subcontractors) or with respect to violation of safety requirements of this Agreement.
18. Trade Contractor contractually has primary responsibility for the safety of its work as it relates to its own employees and other persons. Trade Contractor has the contractual duty to comply with OSHA and all other federal and state regulations for the safety of its employees. Contractor retains the authority and power to make safety recommendations during the progress of the work; however, Trade Contractor is still responsible. If the contract is breached because of Trade Contractor's failure to comply with the foregoing safety laws or regulations, Contractor may terminate the contract.
18. If it is observed by Contractor that Trade Contractor is not operating in accordance with the proper safety practices then the Contractor's designated representative has the right to suggest they make any and all changes deemed necessary to comply. If the Trade Contractor does not comply Contractor reserves the right to notify OSHA. Documentation will be kept in the Trade Contractor's file.
18. In the event Contractor's representative recognizes imminent danger to life or limb the Contractor's representative has the authority to direct Trade Contractor to immediately clear the area of all workers until the situation has been made safe. \*

## SECTION 19: MISCELLANEOUS PROVISIONS

19. Trade Contractor acknowledges that it has visited and inspected the Project site and all conditions which could affect the Work as well as reviewed and/or had the opportunity to review all Contract Documents. Any failure of the Trade Contractor to reasonably ascertain the general and local conditions which could affect its Work will not relieve the Trade Contractor from its responsibility to properly complete the Work without additional expense to the Contractor.

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### Exhibit 10.8 - Page - 8

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19. Trade Contractor shall provide all required first aid and safety equipment including, but not limited to, hard hats, safety glasses, ear protection, eye protection, fall protection, shoring and confined space requirements for its employees and operations. Trade Contractor shall immediately stop work and notify Contractor of any condition it deems unsafe.
19. Trade Contractor shall attend all meetings scheduled by Contractor, including but not limited to, preconstruction meetings, coordination meetings, weekly progress meetings, and safety meetings.
19. Trade Contractor shall keep the premises and all adjoining areas and drives clean and shall daily remove to a designated trash area all waste material connected with his Work and shall, upon request of Contractor, proceed immediately to remove said material from job site.
19. Trade Contractor shall not assign his rights under this Agreement without prior written consent of the Contractor.
19. If required by Contractor, Trade Contractor will furnish Contractor at Trade Contractor's cost and prior to final payment by Contractor, complete as-built drawings to include all details requested by Contractor.
19. Trade Contractor acknowledges his obligation to comply with all applicable Federal, State and Local Acts and Regulations, and, without limiting this obligation, and in addition to all other indemnities provided for in this Agreement, Trade Contractor agrees to comply with all requirements of the Occupational Safety and Health Act of 1970 and to save harmless, defend and indemnify Contractor from and against any and all liability imposed on the Contractor for violations of said act arising out of the Work covered by this Agreement.
19. Trade Contractor's obligations hereunder including any warranties and indemnity obligations shall survive completion of the Work and final payment and acceptance of the Work and will be enforceable by Contractor and/or Owner after

completion and final payment.

19. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs,  
9 devisees, representatives, successors and assigns.

19.1 Written notices shall be deemed to have been duly served if delivered in person to the party for whom it was intended, or  
0 if delivered at or sent by registered or certified mail to the last business address know to the patty giving the notice, or by  
any other method which can provide written confirmation of delivery.

19.1 No action or failure to act by Contractor shall constitute a waiver of any right hereunder, nor shall any act or failure to act  
1 by Contractor constitute an approval or an acquiescence in a breach by Trade Contractor hereunder, except as may be  
specifically agreed in writing.

19.1 No strike, picketing or labor dispute of any kind involving Contractor, Trade Contractor or other contractors, Trade  
2 Contractors or suppliers shall excuse the nonperformance of any duty of Trade Contractor set forth herein.

19.1 The Trade Contractor shall furnish promptly all samples, lists, drawings, cuts, schedules, etc., required in connection with  
3 its Work, but review of same does not relieve him of his responsibility of complying with the requirements of the drawings  
and specifications. All transportation costs on samples and drawings furnished by the Trade Contractor shall be paid by  
him All submittals required by the Contract documents will be made immediately upon request by Contractor.

19.1 The Trade Contractor shall furnish all guarantees, bonds, operating instructions: etc., as required by the specifications.

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**Exhobot 10.8 - Page - 9**

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**Exhobot 10.8 - Page - 10**

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**Exhobot 10.8 - Page - 11**

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