

SIGNATURE IMPACT WINDOWS & DOORS

343 Majorca Ave Unit 410

Coral Gables, Florida 33134

SIWD CONTRACT

SIWD CONTRACT

This Contract (the "Contract") is entered into by and between _____ ("Client") and Signature Impact Windows & Doors, LLC ("Contractor"), effective ____/____/____. This Contract constitutes the full, entire and complete agreement between Client and Contractor, is supported by mutual consideration, and is subject to the terms specified below.

- **Scope of Work.** Contractor shall perform the scope of work (the "Work" or the "Scope of Work") delineated in the estimate previously provided to Client (Estimate No. ____ dated _____) (hereinafter, the "Estimate"), which is specially incorporated herein by reference. Unless specifically stated in the Estimate, the Scope of Work shall be limited to the installation of the windows and/or doors set forth in the Estimate and shall *not* include any demolition work, stucco work, stucco repair work, drywall repair, reinstallation and/or removal, concrete work, plastering, tiling, or any type of work or labor above and beyond the strict installation of windows and/or doors identified in the Estimate. If demolition work, stucco work, drywall repair, replacement and/or removal, concrete work, plastering, tiling, or any type of work or labor above and beyond the strict installation of windows and/or doors is included in the Estimate, Client understands that said additional work is being provided as a courtesy, free of charge and that Client's objection to the finished product shall not constitute a basis to withhold payment. As such, and under no circumstance, shall this additional work be considered "Work" or part of Contractor's "Scope of Work."
- **Payment.** Subject to the terms of this Contract, the total amount set forth in the Estimate (hereinafter, the "Contract Sum") shall be paid to Contractor. Unless Client has signed an SIWD Finance Addendum, the Contract Sum shall be paid as follows: (i) Fifty Percent (50%) of the Contract Sum upon the execution of this Contract; (ii) Thirty Percent (30%) of the Contract Sum upon delivery of any portion of materials (e.g. doors and windows) listed in the Estimate; and (iii) Twenty Percent (20%) of the Contract Sum upon the applicable building department's approval of the final inspection applicable to Contractor's Scope of Work or, in the event a permit is not required, then upon Contractor's notice to Client that the Work has been substantially completed. If final inspection has been approved on account of additional work that is outside Contractor's Scope of Work, the final payment shall be due upon Contractor's notice to Client that the Work has been substantially completed. If Client has signed an SIWD Finance Addendum (the "Finance Addendum"), Client shall be required to pay the Contract Sum pursuant to the terms of the Finance Addendum. Final payment shall *not* be withheld on account of, (i) minor defects/damage in the Materials (ii) Client's failure to perform additional work required for the approval of final inspection (if applicable), (iii) pre-existing conditions, objections or complaints about items other than the Work, (iv) defects/damage in the Materials that are the product of the fabrication or shipment of the Materials by the manufacturer, (v) any issue directly attributable to the Client or the product manufacturer or (vi) any issue which is otherwise outside of Contractor's control. In the event Client fails and/or refuses to make payment as required herein, or to execute and serve the necessary documentation required by Client's financing company as required by the Finance Addendum, the discount set forth in the Estimate (if any) shall become null and void and the Contract Sum will be adjusted accordingly. Client understands and agrees that said discount is offered in exchange for Client's prompt payment or, if applicable, compliance with the Finance Addendum and, therefore, is expressly conditioned upon Client's complete performance of the obligations set forth herein. Any payment that is not made in accordance with this Contract shall accrue interest at the highest lawful rate in the State of Florida from the day after the payment was due through the date the payment is made.
- **Changes to Scope of Work.** The parties may agree to modify the Scope of Work in a written change order that is signed by both parties (hereinafter, a "Change Order"). A Change Order shall detail the scope of the additional work

to be performed as well as the consideration to be paid by Client for the performance of same. Unless otherwise stated in the Change Order, the amount of the Change Order shall be paid as follows: (i) Fifty Percent (50%) of the Change Order amount upon execution of the Change Order; (ii) Thirty Percent (30%) upon the commencement of the additional work set forth in the Change Order and (iii) Twenty Percent (20%) upon completion of the work required in the Change Order. Changes shall not be subject to any Finance Addendum; therefore, payment for any Change Order shall be due as set forth in this paragraph notwithstanding Client's prior execution of a Finance Addendum. Client understands that it may become necessary to alter or otherwise modify the Scope of Work due to: (i) additional requirements imposed by the building department or (ii) existing conditions not readily observable to a layperson. In the event such additional work is required, Contractor shall provide Client with an estimate for the performance of said additional work and the parties shall work together to agree upon a Change Order. In the event the parties cannot agree upon the terms of a Change Order, however, Contractor shall have the right to terminate this Contract and retain the reasonable value of the labor, services or materials furnished through the date of termination or the Initial Payment, whichever is greater.

- **Minor Size Deviations From Sizes Set Forth in the Estimate.** Client understands and agrees that the windows/door sizes set forth in the Estimate are based on rough measurements and that the size of the windows/doors ordered may deviate slightly from the measurements set forth in the Estimate due to a final measurement taken by Contractor after the Contract is signed, but before the windows/doors are ordered from the manufacturer. This slight deviation in size shall not be considered a change to the Work requiring a Change Order and shall not serve as a basis for Client to declare Contractor in breach of the Contract, withhold payment from Contractor or fail/refuse to comply with the provisions of the Contract.
- **Access to the Project Site.** Upon the arrival of the windows and/or doors set forth in the Estimate (hereinafter, the "Materials") from the manufacturer or manufacturer's vendor (as applicable), Contractor shall notify Client and provide Client with a date for the commencement of the Work (the "Commencement Date"). Client shall be present at the project site on the Commencement Date for purposes of inspecting the Materials and shall, from the Commencement Date through Contractor's completion of the Scope of Work, furnish Contractor immediate and continuous access to the project site during normal working hours. For purposes of this Contract, "normal working hours" shall mean Monday through Friday, from 8:00 a.m. through 5:00 p.m. In the event a scheduled installation or inspection must be rescheduled because access to the Project site cannot be provided, a non-refundable re-scheduling fee of \$250.00 will be assessed per day. This fee shall cover the labor, transportation, storage costs, and extended overhead incurred by Contractor on account of Client's failure to provide access. Client understands and agrees that this fee is not a penalty, but a liquidated damage to reimburse Contractor for damages that are difficult, if not impossible to quantify. The cumulative sum of any such fee(s) incurred pursuant to this provision shall increase the Contract Sum accordingly and shall be paid as part of Client's final payment to Contractor. Additionally, Client's failure to provide access as required herein will render any discount set forth in the Estimate null and void, resulting in an increase to the Contract Sum.
- **Materials.** Client understands that the Materials are specially fabricated for installation at Client's property and, therefore, cannot be returned to the manufacturer. Client shall inspect the Materials upon their arrival to the project site to confirm they are acceptable. Any damage, issues, complaints, grievances, defects, non-compliance, variations or objection related to the Materials must be served upon the Contractor **in writing** within 48 of the Commencement Date. Client's failure to provide same within 48 hours of the Commencement Date shall constitute and irrevocable acceptance of the Materials. Upon delivery of the Materials to the project site, Client shall assume all risk of loss and/or property damage to the Materials, unless such loss or damage is caused by Contractor during the performance of the Work. Contractor shall not under any circumstance be responsible for any loss arising from or related to superseding or intervening events such as theft, vandalism, natural disasters, fire, or other causes beyond Contractor's control. Client shall be fully responsible for the safe keeping of the Materials from the date they are delivered to the project site to the date they are installed by Contractor. Client further understands that Contractor is not the manufacturer of the Materials and, therefore, is not responsible for any defects or deficiencies inherent in the Materials, regardless of whether they are covered by manufacturer warranties. Should Client discover any issues with the Materials that may be covered by a manufacturer's warranty, Client shall contact the manufacturer directly. Contractor shall not have any responsibility and/or obligation to assist Client in any way with the

presentation of a manufacturer warranty claim. Contractor's voluntary assistance in the submission of any claim shall not be construed as an acceptance of any obligation to do so. Client understands and agrees that final measurements of the Materials delivered may differ from those reflected in the Estimate.

- **Client Responsibilities.** In addition to obligations imposed elsewhere in this Contract, and unless otherwise indicated in the Estimate, Client shall be solely responsible for the preparation, coordination, inspection, and performance of all work relating to the removal and/or replacement of concrete, drywall, stucco, tiles, window treatments, blinds, alarms, shutters, or any other kind of interior or exterior finish necessary for Contractor to complete the Work. If Contractor is required to remove any blinds, alarms, or alarm sensors that were not removed by Client prior to Contractor's scheduled date of installation, Client shall pay Contractor an additional fee of \$20.00 per blind, alarm or alarm sensor Contractor is required to remove. Contractor shall document the quantity of items removed and issue an invoice to Client for same. The amount set forth in the invoice shall increase the Contract Sum accordingly, and shall be paid as part of Client's final payment to Contractor. Client agrees to hold Contractor harmless of and from any and all losses, damages, charges, fees, fines, penalties, and/or costs incurred as a result of Contractor's removal of blinds, alarms and/or alarm systems. Under no circumstance shall Contractor be responsible for re-installation or replacement of any alarms, blinds, or sensors that it was caused to remove as a result of Client's failure to do so. Client shall also be responsible for the preparation, protection, covering, wrapping or the like of Client's personal property, including, without limitation, carpets, rugs, valuables, furniture, fixtures, tables and paintings within the property where Contractor is to perform its Scope of Work. **It is highly recommended that all such personal property be removed from the areas where Contractor is to perform any portion of the Scope of Work.** Client agrees to hold Contractor harmless of and from and losses, damages, replacements costs of any kind resulting from physical damage to Client's personal property, regardless of whether said damage is caused, in whole or in part, by Contractor's negligence in the performance of the Scope of Work.
- **Time.** The Parties agree that Contractor shall apply for permits (if applicable) within 90 days of Client's payment of the Initial Payment and that Contractor shall commence the Work within 90 days of permit issuance, provided the Materials have been delivered by the manufacturer. If the Materials are not delivered within said time, the Contractor shall commence the Work within 30 days of the arrival of the Materials. Beyond that, however, Client understands and agrees that time is not of the essence with respect to Contractor's completion of the Scope of Work and that any time estimates previously provided were simply estimates and do not require the Scope of Work to be completed by a certain date. Time is of the essence, however, with respect to all other obligations imposed by this Contract.
- **Indemnification.** Client agrees to defend, indemnify and hold harmless Contractor, along with Contractor's successors and assigns against all lawsuits, actions, demands, arbitrations, claims, administrative proceedings, and of and from all damages, fines, penalties, attorneys' fees, and/or costs arising from or relating to this Contract, the Work or the Materials, including, without limitation, claims by third parties for personal injury or property damage, whether said injury or damage is caused in whole or in part by Contractor, unless same was caused entirely by Contractor's gross negligence or willful wanton or intentional misconduct. The indemnity obligation imposed by this provision shall have a \$1,000,000.00 monetary limit, which Client and Contractor agree bears a reasonable commercial relationship to this Contract and is part of any specifications or bid documents applicable to the Scope of Work.
- **Permits.** If Client's municipality and governing building department requires a permit to be pulled for the Scope of Work, any and all costs associated with permit issuance, including, without limitation, application fees, drawings, engineering costs, survey costs, and/or architectural drawings shall be the responsibility of Client. Such costs are not included within the Contract Sum unless specifically indicated in the Estimate.
- **Discount (If Any).** Client understands and agrees that any discount set forth in the Estimate was offered in exchange for Client's complete and timely performance of all obligations required under this Contract, including those

obligations set forth in any addendum to this Contract, and that Client's failure to completely and timely perform said obligations will render the discount null and void. If the discount set forth in the Estimate is rendered null and void, the Contract Sum will be increased accordingly and Client shall be required to pay the additional sum as part of its final payment.

- **Warranty.** Contractor provides a (1) year warranty on the labor and workmanship associated with the Work. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTY OR QUALITY. CLIENT'S EXCLUSIVE REMEDY FOR ANY CLAIM UNDER THIS CONTRACT (WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL THEORY), AND CONTRACTOR'S TOTAL LIABILITY SHALL BE LIMITED TO THE REPAIR AND REPLACEMENT OF ANY NON-CONFORMING LABOR ARISING OUT OF ANY SUCH CLAIM. CLIENT AGREES THAT IN NO EVENT SHALL CONTRACTOR BE LIABLE TO CLIENT FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PURCHASE DAMAGES RESULTING FROM ANY CLAIM ARISING OUT OF OR RELATING TO THIS CONTRACT, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF USE, BUSINESS LOSSES, LOSS OF RENTAL VALUE, DAMAGE TO PROPERTY OR ANY LIABILITY OF CLIENT TO THIRD PARTIES.**
- **Governing Law / Venue.** This Contract is being made pursuant to, and shall be construed in accordance with, the laws of the State of Florida. This Contract may not be assigned by Client without Contractor's express written consent. The parties agree that venue for any action arising out of or related to this Contract shall be in Miami-Dade County, Florida.
- **Attorneys' Fees.** In the event Contractor is required to take legal action to enforce the terms of this Contract, the prevailing party in said action shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party, including all attorneys' fees and costs incurred on appeal.
- **Severability.** If any provision or portion of this Contract, or any of the documents executed in connection herewith, are determined to be invalid or unenforceable, all other provisions or portions of this Contract, as well as all documents executed in connection herewith, shall nevertheless continue in full force and effect.
- **Force Majeure.** Contractor shall not be considered in breach of this Contract if its performance of the Work is delayed or rendered impracticable by the occurrence of any one or more the following: (i) fires, floods, or other casualties; (b) wars, riots, embargoes, governmental regulations, government ordered closures or martial law; (iii) the inability to obtain the Materials from usual source of supply; (iv) shortage of transportation or delays in transit; (vi) strike or other labor troubles; or (vii) other conditions not reasonably within Contractor's control, whether or not of a kind mentioned herein. Nothing in this provision shall be construed to impose any deadline upon Contract with respect to the completion of the Work or otherwise render time of the essence with respect to same.
- **Client's Representations.** Client warrants and represents that he or she is the sole owner of the property upon which the Scope of Work is to be performed or, alternatively, is a co-owner of the property along with his or her spouse, and the Client is legally authorized to enter into this Contract and to perform the Work at the subject property. In the event Client is a partnership, corporation, limited liability company, trust or any other form of entity or organization, the person signing this Contract on behalf of the entity or organization shall (in addition to the Client) be personally liable to Contractor for any damages incurred as a result of Client's breach of this warranty and representation

- **Complete Contract.** This Contract shall not be modified, amended, supplemented, waived or changed orally or through the parties' course of conduct, and can only be modified, amended, supplemented, waived or changed in a writing making specific reference to this Contract and signed by both Contractor and Client. This Contract constitutes and represents the entire understanding and agreement between Contractor and Client with respect to the goods and/or services referenced in this Contract and shall not be modified or called into question by prior and/or contemporaneous oral or written statements by the parties.
- **Waiver of Jury Trail.** BY EXECUTING THIS CONTRACT, CLIENT EXPRESSLY, INTENTIONALLY, UNCONDITIONALLY, KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVES ANY RIGHT CLIENT MAY HAVE TO A RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION ARISING OUT OF OR RELATED TO THIS CONTRACT.
- **Third Party Beneficiary.** Nothing in this Contract, whether express or implied, is intended to confer any rights or remedies under or by any reason of this Contract on any person or entity other than the Contractor and the Client, and their respective administrators, executors, legal representative, heirs and assigns.
- **Contractor's Signage.** Client agrees, without exception or limitation, to allow Contractor full access to photograph, video, or otherwise document the Work. Client expressly permits Contractor to have its signage posted on the project site and to have Contractor's vehicles/trucks parked in the driveway, curb, or entrance while the Work being is performed.
- **Ambiguity.** In the event of an ambiguity or contradiction between any provisions set forth in the Estimate and the provisions of this Contract, the provisions of this Contract shall control.
- **Waiver.** No action or failure to act by Contractor shall constitute a waiver of any right, privilege or power that Contractor has or may have pursuant to this Contract or applicable law. The failure or delay by Contractor to require the performance of any provision of this Contract shall not affect the right of Contractor to exercise any right, power, or remedy granted to it under this Contract or otherwise available to it, or to require that Client perform such provision.
- **ANY CLAIM FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.**
- **Florida's Homeowner's Construction Recovery Fund. PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:**

Division of Professions
 Construction Industry Licensing Board
 2601 Blair Stone Road
 Tallahassee, FL 32399-0783

- **FLORIDA’S CONSTRUCTION LIEN LAW. ACCORDING TO FLORIDA’S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STAUTES), 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 THAT 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.**
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- **Client represents and agrees that he/she has relied and is relying on their own judgment concerning the**
- **effect and consequences of this Contract, that he/she has completely read the foregoing terms of the**
- **Contract, and that he/she fully understands and voluntarily accepts all terms of this Contract.**
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- **IN WITNESS WHEREOF, the Parties hereby agree to the foregoing and have caused this Contract to**
- **be effective as of the date of execution indicated above.**
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By:			By:	
	CLIENT			SIGNATURE IMPA DOORS

Authorized Signature _____