

**ADDENDUM TO CONTRACT FOR CONCRETE AND
RELATED REPAIRS AT TRADE WINDS WEST CONDOMINIUM, INC.**

This Addendum is made and entered into this 9th day of June 2022, by and between TRADE WINDS WEST CONDOMINIUM, INC. ("Association") and DESIGN CENTER, INC. ("Contractor") and shall refer to and modify the contract consisting of nine (9) pages ("Contract"). To the extent of any conflict between this Addendum and the Contract, this Addendum shall control. The parties, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Scope of Work. Contractor shall provide all materials, supervision, labor, tools and equipment necessary to complete the Work described in, and anticipated by the Contract and those certain plans and specifications prepared by Campbell Engineering Consultants, LLC, consisting of six (6) pages identified as Sheet #CS, GN, SP, SD, S1 and S2, made a part hereof as Exhibit "A." All such Work shall be done in a workmanlike manner and shall be in accordance with the Florida Building Code and any other laws, ordinances, codes, rules or regulations of any governing body having jurisdiction over the property operated by the Association for the work described in the Contract in effect on the date the Contract and this Addendum are executed and the cost of compliance therewith shall be at no extra charge to the Association (except where additional quantities are required as set forth in the Contract. All of the Work to be performed by Contractor shall be collectively referred to as the "Work".

2. Permit. No Work shall be performed nor any payment other than a deposit made prior to issuance of a permit for the Work. Contractor shall obtain the permit. Association shall reimburse Contractor for the actual cost of the permit within ten (10) days of being provided the receipt for such cost.

3. Construction Lien Law. No Work shall be performed nor any money paid except for the initial deposit before a Notice of Commencement is recorded in the public records and a certified copy is posted at the job site. No progress payments shall be made to Contractor, unless, along with any payment requests, Contractor provides partial lien waivers from any subcontractor or labor or material supplier waiving their lien rights through the date of such progress payment. No final payment shall be made under the Contract unless Contractor provides with its payment request a Contractor's Final Affidavit and Release of Lien and final lien waivers are provided from each subcontractor or labor or material supplier.

4. Time of Commencement and Completion. Work shall be commenced within ten (10) calendar days after execution of the Contract and this Addendum, issuance of any permit or posting of a certified copy of the recorded Notice of Commencement, whichever occurs later (Commencement Date). Work shall be completed within forty-five (45) consecutive calendar days from the Commencement Date, subject to any extensions authorized in writing, signed by the Association. The Association shall provide extensions to the extent they are reasonably necessary as a result of the delays beyond the Contractor's control and so long as the Contractor requests such an extension in writing within five (5) calendars days of the event which gives rise to the request for an extension. Contractor shall diligently undertake the Work from the Commencement Date and continuously perform such Work, without interruption, completing the Work as expeditiously as possible. Time is of the essence in connection with all requirements contained in the Contract and this Addendum.

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If Contractor does not complete the Work within the deadlines established herein and acknowledging that the Association will suffer damages which may be difficult or impossible to calculate, the Association shall be entitled to Two Hundred Dollars (\$200.00) for each calendar day or portion thereof that the Work is delayed beyond the deadline set forth herein, which amount shall be paid as liquidated delay damages, and not as a penalty. The Association shall have the right to deduct any liquidated damages from any payment due Contractor in accordance herewith.

In the event that Contractor is delayed in progress of the Work through no fault of its own, Contractor may be 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. 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 the Contract and this Addendum. Damages as referenced in this "no damage for delay clause" shall include any type of damages that are or could be awarded by any court or arbitration panel, such as, by way of general example but not limitation, tort, contract, strict liability, liquidated and/or punitive damages, damages for additional general conditions. By way of specific example but not limitation, damages as referenced within this clause includes loss of use, loss of profits, overhead and repair costs, idled equipment, loss of bonding capacity, mobilization, demobilization, cost of capital, replacement, loss of wages, pain and suffering, loss of production costs to replace the facilities, equipment and/or product loss, increased home office overhead, increased general conditions, loss of use, decrease in value, and/or any other item of damage or loss. The Contractor recognizes and specifically acknowledges the terms and conditions of the "no damage for delay" clause upon execution of this Addendum.

5. Contract Sum – Payments. Contractor shall be entitled to payment as set forth in the Contract. Such amount shall be inclusive of all taxes, licenses, permits, except for the cost of the Permit and any fees or engineering costs incurred by the Association separately. The amount set forth in the Contract shall not be subject to any increase unless additional Work is required not contemplated within the Work as described herein and any additional charges are agreed in advance by the Association in writing. This includes any additional quantities where the Contractor must obtain approval from the Engineer in advance of such additional quantities. Failure to obtain advance written approval shall be deemed a release of the Association of any obligation to pay any additional amounts to Contractor. No payment shall be made unless the Association's Representative has determined that the Work is in accordance with the Contract and other documents referenced herein. Progress payments and final payments may be withheld for (1) defective Work not remedied; (2) liens filed against the property operated by the Association for Work performed under the Contract; (3) damage to real or personal property of the Association, any unit owner or tenant or any third party claims for which have not been paid or otherwise satisfied; (4) failure of the Work to progress in accordance with the Contract or this Addendum; or (5) failure to carry out the Work or comply with the Contract, this Addendum or any documents referenced therein.

Final Payment shall not be due until approved final inspections of the Work are completed by any governmental entity which has issued a permit for the Work, all punchlist items have been corrected, any warranties required herein have been issued and all other requirements of the Contract and this Addendum have been fulfilled.

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6. Insurance. Contractor shall purchase and maintain such Insurance reasonably required by the Association to protect against claims for damage to property, injury or death arising out of or resulting from the Work being performed by the Contractor and any subcontractors or labor or material suppliers or anyone directly or indirectly employed by any of them to perform the Work. All such Insurance shall include the Association as a named additional insured. Contractor shall also purchase and maintain Worker's Compensation Insurance for any person coming on to the property operated by the Association to provide any labor or materials in accordance herewith. Certificates of Insurance evidencing compliance with such obligations are attached hereto and made apart hereof as Exhibit B. Contractor shall be obligated to update its evidence of compliance with the insurance obligations contained herein, including providing copies of any policies, at any time during performance of the Work, upon five (5) days written request by the Association. The insurance limits contained in Exhibit B shall not act as a limit on Contractor's liability as otherwise set forth herein. Notwithstanding the provisions of the Contract to the contrary, the Association shall not be obligated to obtain Builder's Risk insurance, Contractor shall be in control of and bear the risks of loss of any work until completed.

7. Governing Law, Venue and Attorneys' Fees. The Contract and this Addendum shall be construed in accordance with the laws of the State of Florida. Any legal proceeding brought for any matters arising out of or relating to the Work described herein shall be brought in a Court of competent jurisdiction in Monroe County, Florida. In the event of a dispute arising under this Contract, or any warranty, whether or not a lawsuit or proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable cost to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable. Entitlement shall be in all courts, including bankruptcy court, at all trial and appellate levels.

8. Modification, Waiver and Assignment. No change or modification to the Contract shall be valid unless in writing and signed by all of the parties to the Contract. No waiver of any provisions of the Contract shall be valid unless in writing and signed by the party against whom it is sought to be enforced. The Contract may not be assigned in whole or in part without the written consent of the non-assigning party.

9. Termination. If either party breaches the provisions of the Contract or this Addendum, the non-breaching party may provide written notice to the breaching party setting forth the nature of the breach and providing an opportunity to cure the breach. If the breach is not cured within ten (10) calendar days of the notice, or such other period as the parties may agree, then the non-breaching party may terminate the contractual relationship effective ten (10) days after such notice or such extended period as the parties may agree in writing. If the Association terminates the Contract in accordance herewith, it may engage another contractor to complete the Work and shall not be obligated to pay any additional sums to Contractor until the Work is completed. If the amount necessary to complete the Work is greater than the remaining balance, then Contractor shall pay the Association such excess amount within ten (10) calendar days of notice of such amount. If the amount to complete the Work is less than the amount retained by the Association, it shall pay any

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surplus to the Contractor within ten (10) days after final payment to others for the Work. If Contractor terminates the Contract in accordance herewith, it shall be entitled to the amount of the Contract Sum attributable to such portion of the Work as has been properly completed through the date of termination.

10. Contractor's Responsibility. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees performing the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. All damage caused as a result of the Work shall be corrected, repaired or replaced by Contractor. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Association, its officers, directors, agents 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) is caused by any negligent act or omission of 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 all other obligations contained in the Contract and this Agreement.

11. Warranty and Claims. Contractor warrants that the Work shall conform to the requirements of the Contract and this Addendum and unconditionally guarantees and warrants they shall provide all labor and materials necessary to correct any defects due to faulty materials, equipment and/or workmanship within seven (7) calendar days of written notice from the Association. Such warranty shall extend for a period of time set forth in the Contract or for a period of five (5) years, instead of whichever is greater from the date of final completion of the Work. Such warranty shall be in addition to any manufacturer's warranties provided by the manufacturer of any materials which are incorporated into the Work and Contractor agrees to comply with all instructions, specifications and requirements of any such manufacturer. The Association and Contractor agree to waive the requirements and provisions of Chapter 558, Florida Statutes. Claims with respect to the Work shall be controlled by the provisions of the Contract and this Addendum.

12. Transfer of Lien. In the event any lien should be filed against the property operated by the Association arising out of or resulting from the Work, Contract or this Addendum, Contractor shall indemnify and hold the Association harmless therefrom or from any suit or proceeding pertaining thereto, including any and all costs and attorneys' fees. If such lien is filed, then Contractor must transfer such lien to a bond pursuant to the provisions of Section 713.24, Florida Statutes, within five (5) calendar days of any written notice demanding such transfer by the Association to Contractor. If the Contractor fails to do so, the Association may do so or may directly pay the lienor and may deduct the amount of any such bond or payment any expenses associated therewith from the amounts due under the Contract or this Addendum.

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13. Survival of Terms. All provisions of the Contract and Addendum as may be necessary to fulfill the intention of the contracting parties, including but not limited to provisions relating to insurance, legal action, indemnification and warranties, shall survive completion of the Work or termination of the Contract and this Addendum.

14. Engineer/Association's Representative. William R. Campbell, P.E. shall be the Engineer and Association's Representative with respect to the Work. No payment shall be made, other than the amount due upon signing and upon mobilization without certification from Engineer that the Work complies with the requirements of the plans and specifications and that Contractor is entitled to such payment in accordance herewith. Engineer shall have the right to reject any Work not conforming to the Contract, this Addendum, any plans and specifications or any laws, ordinances, codes, rules or regulations.

15. Independent Contractor. In performing the Work described in this Contract, Contractor shall be an Independent Contractor. Contractor shall be responsible for the means and methods of all work performed, so long as in compliance herewith.

ASSOCIATION:

TRADE WINDS WEST CONDOMINIUM, INC.

By: Peggy S. Bronn
Peggy Bronn, President

CONTRACTOR:

DESIGN CENTER, INC.

By: Alex Estevez
Alex Estevez, Project Manager