



SUBCONTRACT AGREEMENT PACKET

Inside this packet you will find:

- 1) **Subcontract Agreement** Print, sign, initial, and return to ap@wanerconstruction.com. A fully executed copy will be sent back to you once signed by the Project Manager.
- 2) **Schedule of Values** Complete and return with your signed subcontract.
- 3) **Exhibit A 2-pg. Pay Application Certificate** Required format to be used for monthly billing submissions (Excel template available upon request). Pay Application requests are **due to ap@wanerconstruction.com by the 23rd of each month at 12pm** (unless otherwise notified); should this day fall on a weekend or holiday, pay application requests become due on the business day prior to the weekend or holiday. Pay requests received after the deadline will not be included in the current month's billing to the owner and will be held for processing in the following month.
- 4) **Exhibit B – Conditional Partial Release** must accompany each pay application request, shall reflect 5% retention held, and represent the Exhibit A amount listed on line 8. CURRENT PAYMENT DUE
- 5) **Supplier Releases: Conditional / Unconditional, Partial / Full & Final** – A monthly Conditional or Unconditional release for each supplier and/or tier 2 subcontractor is required to be submitted prior to processing of each progress payment. A Full and Final release for each will be required prior to retention release.
- 6) **Exhibit C – Change Order** – Complete and submit with related back up documentation to Project Manager prior to billing.
- 7) **Exhibit D – Insurance Information and Requirements**
- 8) **Exhibit E Safety Information** Forward to your onsite project supervisor to ensure compliance with these safety practices.
- 9) **Material Suppliers, Equipment Rental Vendors, and Tier 2 Subcontractor lists** – Complete and return with names and phone numbers of each company and/or Tier 2 Contractor to be used on the project. If not applicable, at a minimum, complete the BILLING CONTACT INFORMATION section, indicate "None" or "N/A" then return both pages to ap@wanerconstruction.com

Revised 4/2020

8950 Barrons Blvd., Unit 103
Highlands Ranch, CO 80129
Phone: 303-683-0099 | Fax: 303-683-3789



PROJECT: 2301. – Shake Shack Interquest
DATE: 6/19/2023
TO: National Tab

ACTION ITEMS: Due within 2 weeks of receipt and prior to being onsite:

- Return signed, initialed, and dated **Subcontract Agreement** to ap@wanerconstruction.com
- Return completed SOV
- Insurance Certificate – Register and submit through certificatecompliance@imacorp.com (refer to Exhibit D).
- Provide 4 electronic **Submittals**, and 4 physical samples or as required by the specifications.
- Submit appropriate **MSDS (Material Safety Data Sheets)** as required, titled with your company's name and project.
- Return Completed **Material Supplier, Equipment Rental, and Tier 2 Subcontractor lists**.
- Return Completed **W-9** if one hadn't been previously submitted, or if any entity changes have occurred.

All items listed above must be received by Waner Construction Company, Inc. to ensure timely processing of pay requests and payment disbursements.

Please note the following:

- Retention billings are not required (unless requested). Retention will be released and paid once the project is complete, has been accepted by the owner, final funding has been received, and all required supplier and Tier 2 releases have been submitted.
- Please email (preferred), fax, or mail one copy of your pay application; multiple copies are not needed.
- Questions? Email Accounts Payable at ap@wanerconstruction.com or contact our office at (303)683-0099.



Subcontract Agreement

Project#.Subcon# : 2301.036

Date: 6/19/2023

GENERAL CONTRACTOR: **Waner Construction Co., Inc.**
8950 Barrons Blvd., Unit 103
Highlands Ranch, Colorado 80129

AND SUBCONTRACTOR: **National Tab**
1329 E Kemper Rd
Cincinnati, OH 45246
855.682.6822 - Not Specified
Email:

FOR PROJECT: **Shake Shack Interquest**
9732 Federal Dr
Colorado Springs, CO 80921

FOR OWNER: **Shake Shack Colorado LLC**
225 Varick St Suite 301
New York, NY 10018

SCOPE OF SUBCONTRACT WORK: Per the contract documents see attached "EXHIBIT X & EXHIBIT Y". Provide all labor, material, supervision and equipment for **Test and Balance** including:

- 1) TAB of RTUs, OA only on office FCU, MUA, Kitchen Hood and Exhaust Fans
- 2) Provide/ install two PHI-PKG-14 purifiers
- 3) Tax

GENERAL INCLUSIONS: 1) Cooperation and Coordination With All Trades, 2) Daily clean up to WCCI-Provided Dumpster, 3) All work per OSHA Regulations and WCCI Safety Policy, 4) Submittals, Samples, and Product Data, 5) Taxes.

EXCLUSIONS:

SUBCONTRACT AMOUNT: (in figures) \$ 4,314.00
(in words) FOUR THOUSAND THREE HUNDRED FOURTEEN AND 00/100 DOLLARS

Waner Construction Company's Subcontract Terms and Conditions (revised 4-24-2023) are attached hereto and incorporated in their entirety on Pages 1 thru 6. All of the terms and provisions of the Subcontract Terms and Conditions are acknowledged and accepted by both parties.

National Tab

Waner Construction Company

By: **William Turnbough**

By: Craig Howell,

Project Manager

Title

Signature:

Date:

6/19/2023

Signature:

Date:

WANER CONSTRUCTION COMPANY, INC. – SUBCONTRACT TERMS AND CONDITIONS

Revised 04/2023

1. WORK

1.1 Subcontractor agrees to perform all Work in conformance with the Contract Documents, which include all documents identified in the Subcontract Agreement and in this Subcontract Terms and Conditions, hereinafter referred as the "Subcontract."

1.2 The Contract Documents consist of the Subcontract Agreement, this Subcontract Terms and Conditions, the Prime Contract, consisting of the agreement between the Owner and Contractor, and any other contract documents identified therein, including any general, supplementary and other conditions, drawings, specifications, addenda issued prior to the execution of the Prime Contract between the Owner and the Contractor, and modifications issued subsequent to the execution of the Prime Contract between the Owner and Contractor, whether before or after the execution of this Subcontract Agreement, and any other document listed in the Prime Contract between the Owner and Contractor. Subcontractor acknowledges that copies of each of these documents has been made available for review by the Subcontractor or are available upon request to Waner Construction Company, Inc., the Contractor herein, and that the Subcontractor has inspected the Contract Documents to the extent it feels necessary to understand all of the requirements applicable to the Subcontract Work.

1.3 Time is of the essence in this Subcontract. The Subcontractor shall begin work within five (5) days after notification by the Contractor and shall prosecute the work continuously and uninterruptedly with all possible speed to complete the entire Work covered by this Subcontract.

1.4 The Subcontractor shall keep himself thoroughly informed as to the progress of the job and shall prosecute his Work, and the several parts thereof at such times and in such order as the Contractor considers necessary to keep the same sufficiently in advance of the other parts of the Work and to avoid any delay in the completion of the construction as a whole.

1.5 The Subcontractor agrees to furnish all material and to perform all Work required strictly in accordance with the Contract Documents.

1.6 The Subcontractor shall obtain and pay for all permits, fees and licenses necessary for the execution of the Subcontract Work.

1.7 In carrying out all of its Subcontract Work, the Subcontractor shall comply with all applicable laws, regulations, ordinances, rules, codes, statutes and other requirements of local, state or federal government authorities having jurisdiction over the Project ("laws"), including, without limitation, laws relating to payment of or working conditions for employees, non-discrimination, immigration, employment taxes, health and safety of employees and other persons, licensing statutes or rules, and building codes.

1.8 The Subcontractor shall promptly amend and make good any defective materials and/or workmanship to the entire approval and acceptance of the Contractor, Owner and/or Architect and their authorized representatives. Should the Subcontractor refuse or neglect to proceed at once with the correction of rejected or defective materials and/or workmanship after receiving notice to do so, it is agreed that the Contractor shall have the right and power to have the defects remedied or the changes made at the expense of the Subcontractor, and the Subcontractor agrees to pay to the Contractor on demand any and all loss and/or expense paid or incurred by the Contractor in remedying such defects and/or making such changes, together with interest thereon at the rate of twelve percent per annum, until paid, in addition to all other loss, damage, and extra expenses for which Subcontractor may become liable under this Subcontract.

1.9 If the Subcontractor deems that surfaces or work to which his Work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said condition shall be given to the Contractor before proceeding or taking remedial action, otherwise Subcontractor shall be fully and solely responsible and liable for any and all expense, loss, or damage resulting from said condition and Contractor shall be relieved of all liability in connection therewith.

1.10 The Subcontractor shall furnish promptly all samples, lists, drawings, cuts, schedules, etc., required in connection with his Work, but approval 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 Subcontractor shall be paid by him.

1.11 To the fullest extent permitted by law, the Subcontractor shall effectively secure and protect his materials and Work and shall bear and be liable for all loss and/or damage of any kind in connection therewith at any time prior to the final completion and acceptance thereof. The Subcontractor shall reimburse the Contractor on demand for any and all breakage or other damage to other work or materials caused in whole or in part by the Subcontractor in the execution of this Subcontract. The Subcontractor's obligations shall be subject to the provisions of Section 5 hereof to the extent that any such loss or damage is caused by the fault or negligence of Contractor.

1.12 The Subcontractor shall provide at his own expense, whatever storage sheds, work shops and offices are necessary for the performance of this Subcontract and shall remove the same and thoroughly clean premises at the completion of the Work.

1.13 The Subcontractor shall clean up and remove from the site as directed by the Contractor, all rubbish and debris resulting from his work. Also, he shall clean up to the satisfaction of the inspectors, all dirt, grease, marks, etc., from walls, ceilings, floors, fixtures, etc., deposited or placed thereon as a result of the execution of this Subcontract. If the Subcontractor refuses or fails to perform this cleaning as directed by the Contractor, the Contractor shall have the right and power to proceed with said

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cleaning, and the Subcontractor will on demand repay to the Contractor the actual cost of said labor plus a reasonable percentage of such cost to cover supervision, insurance, overhead, and other related costs, including any fines or fees assessed by Owner.

1.14 The Subcontractor warrants that all materials and equipment furnished under this Subcontract Agreement shall be new, unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Subcontractor agrees to remove or correct, without cost to the Contractor or Owner, all Work performed by it under this Subcontract that is rejected by the Owner or Architect or found to be defective in material and workmanship or not in conformance with the Contract Documents, during the performance of its Work and within a period of one (1) year from the date of substantial completion or for such longer periods of time as may be required in the Prime Contract, other Contract Documents or by applicable law. Subcontractor also agrees to remove or correct any portions of the Work that may be damaged or destroyed by such defective Work or by the removal or correction of such defective Work. Warranties shall commence on the date of substantial completion of the Work or a designated portion, unless another commencement time is required by the Contract Documents in which event, such time shall control. All warranties and any duty to correct Work shall extend for the time required by the Prime Contract and any other Contract Documents. Subcontractor shall not be compensated for any warranty work.

2. PAYMENT

2.1 The Contractor agrees to pay the Subcontractor for the full and faithful performance of his Work for the sum set forth in the Subcontract Agreement, subject to additions and deductions for changes as may be agreed upon in writing signed by both parties, provided that no payments are to be made unless the Subcontractor's rate of progress, work done and material furnished are satisfactory to the Contractor, Owner, and/or Architect, and the Owner has paid the Contractor for the Subcontractor's work and as herein agreed upon. Payments are to be made as follows:

- (a) All pay requests must be submitted on the Waner Construction pay request form and in accordance with the payment polices as set forth on Exhibit A attached hereto.
- (b) A conditional partial lien release (Exhibit "B") must accompany all pay requests.
- (c) All pay requests must be submitted on the Waner Construction pay request form (Exhibit "A") on or before the 23rd day of each month. Amounts due will be paid within seven days after the amount requested has been approved and paid by the Owner, and as more specifically described in Paragraph 2.3 below. Any pay request not received by the 23rd of the month may be held for an additional 30 days, until the next billing cycle.

(d) The Contractor shall upon receipt from the Owner pay the Subcontractor 95% of such work, labor and materials, and shall retain the remaining 5% until the final completion and acceptance of all work covered by this Subcontract Agreement, and such percentage so retained shall not be considered monies due and owing until the Work under the Subcontract has been completed to the satisfaction of and the same accepted by the Owner and payment therefore has been made by Owner to Contractor, as provided in paragraph 2.3 below.

(e) Regardless of the terms of payment provided for herein the Contractor shall not be required to make any payments that would leave a balance due to Subcontractor insufficient to cover the retained percentage plus an amount sufficient to satisfy all obligations of the Subcontractor for labor, materials, equipment, etc., furnished or to be furnished by the Subcontractor hereunder.

2.2 Subcontractor agrees, subject to the provisions of this Subcontract, to accept the considerations and/or amounts set forth in the Subcontract Agreement as full compensation for its performance of this Subcontract, including but not limited to the performance of all Work and the furnishing of all labor, supervision, engineering, plant, equipment, supplies, materials, and any other item or thing necessary to the performance of the Work, all loss or damage arising out of the nature of the Work, for all risks of every description assumed by Subcontractor in connection with the Work, and for well and faithfully completing the several parts of the Work and the whole thereof, in the manner and at the time or times specified in this Subcontract or by the Contractor.

2.3 Receipt of payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor, for payment of Subcontract Work. It is an express condition precedent to payment by the Contractor to the Subcontractor that the Contractor receive payment from the Owner for the Subcontractor's Work. The Contractor shall be under no obligation to pay the Subcontractor for any Work done pursuant to this Subcontract until the Contractor has been paid therefore by the Owner, and then only to the extent of the payment received from the Owner. The Subcontractor expressly bears the risk of the Owner's nonpayment.

2.4 The Subcontractor shall reimburse the Contractor for any loss or damage, including but not restricted to any liquidated damages which may become due the Owner under the Prime Contract, and extra expense paid or incurred by the Contractor which is due to (a) Subcontractor's failure to deliver any and all materials and/or supply labor, furnish equipment or services, etc., as required herein, and/or (b) Subcontractor's failure to properly and timely perform any and all Work, in keeping with the progress

of the general construction work, and/or (c) to properly perform any term, covenant or condition contained in this Subcontract. Upon demand from Contractor, Subcontractor shall also indemnify and defend Contractor from any claims by the Owner or others arising out of or related to the Subcontract Work.

2.5 The Subcontractor shall furnish the Contractor with such partial releases and waivers of lien from Subcontractor and from his subcontractors, material men and creditors on labor and/or material and/or other claims on a monthly basis, and final releases and waivers of lien at the time of final payment on this Subcontract. Any such waiver of lien shall be on the forms attached hereto as designated by Contractor or that may be required by the Contract Documents.

2.6 The Subcontractor agrees that monies received for the performance of this Subcontract shall be held in trust and used first for labor and material entering into this Work and said monies shall not be diverted to satisfy obligations of the Subcontractor on other contracts or for other purposes.

2.7 The Subcontractor shall pay all of its sub-subcontractors and suppliers within seven (7) days of receipt of payment by Subcontractor.

3. CHANGES

3.1 The right is reserved by the Contractor to require changes in deviation from, additions to, and omissions from the work herein contracted, and the Subcontract price shall be adjusted accordingly, subject to the terms of ¶3.3 herein. Before proceeding with any change, deviation, addition, or omission, the Subcontractor shall first obtain written authorization from the Contractor on the Change Order Form attached hereto as Exhibit C.

3.2 The Subcontractor shall have no dealings with the Owner or his authorized representatives in regard to changes, extras or omissions in connection with this Work, but must deal only with the Contractor. No extra charges will be accepted from Subcontractor without prior written approval from Contractor's Job Superintendent or other designated personnel, and a properly executed Change Order Form.

3.3 The Subcontractor agrees to make any claims for changes to the Subcontract Amount and extension of time or otherwise to the Contractor in the same manner as provided in the Prime Contract for like claims with the Contractor upon the Owner, and in such time as will enable the Contractor to present such claims to the Owner for payment or recognition. The Contractor will not be liable to Subcontractor on any claim not timely or properly presented and allowed and approved by the Owner and all such claims are waived. No claim for change to the Subcontract Amount or extension of time shall be allowed unless approved in writing by the Contractor, and the Architect and Owner if required by the Contract Documents.

4. TERMINATION

4.1 If the Subcontractor refuses to proceed with his Work as directed by the Contractor or fails to perform said Work in accordance herewith, in whole or in part, or fails to perform any

term, covenant or condition contained in this Subcontract, the Contractor, may at its option, and without prejudice to any other remedy the Contractor may have, upon three (3) days written notice mailed by U.S. mail, to the Subcontractor's latest known address, take any steps the Contractor deems advisable, including but not limited to the termination of this Subcontract, and such steps as are necessary to secure any labor, materials, equipment and services, and may take over all of the Subcontractor's equipment, materials, and supplies, and prosecute the Work to completion.

4.2 In case the Contractor deems the foregoing procedure necessary, all monies expended and all of the losses, damages and extra expenses shall be deducted from the subcontract price herein stated, and if such expenditures, together with said losses, damages and extra expenses, exceeds the amount otherwise due to the Subcontractor hereunder, the Subcontractor agrees to pay to the Contractor on demand the full amount of such excess, together with interest thereon at the rate of twelve percent per annum until paid.

4.3 Contractor may also terminate this Subcontract at any time for its own convenience, for any reason or no reason, and if the Subcontract is so terminated, Contractor shall pay to Subcontractor all amounts then earned for work actually completed satisfactorily and due and payable under Section 2 of this Subcontract Agreement, plus, at the discretion of the Contractor, a reasonable allowance to defray termination costs actually incurred to the extent such costs are paid by the Owner to the Contractor as required in Section 2 herein., but in no event shall Contractor be required to pay Subcontractor for overhead, profit, or any other costs or damages on the portion of the Subcontract uncompleted at termination.

5. INSURANCE AND INDEMNIFICATION

5.1 Subcontractor hereby represents and warrants that he has reviewed the insurance requirements as set forth on Exhibit D, entitled "Insurance and Indemnification Requirements Applicable to All Work Performed for Warner Construction Company, Inc." and has agreed to all terms and conditions as stated therein.

5.2 The Subcontractor shall carry and pay for (a) Workmen's Compensation insurance for all employees including owner of a sole proprietorship; and (b) Commercial General Liability (CGL) and Automobile Liability insurance providing bodily injury and property damage coverage, including contractual liability coverage. Said policies shall provide limits of liability required by the Contractor as set forth on Exhibit D and be written in companies acceptable to the Contractor. The Subcontractor shall furnish Contractor with copies of said policies or with certificates showing names of the carriers, numbers of the policies and expiration dates, through registration and submission to Contractor's certificate compliance system.

5.3 To the fullest extent permitted by law, Subcontractor hereby agrees to indemnify and hold harmless the Contractor, Owner and Architect, their agents and employees, from any and all liability, damages, losses, claims, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than to the Work itself) including loss of use therefrom, and expenses, including but not limited to attorney's fees, howsoever

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caused, resulting directly or indirectly from or connected with the performance of this Subcontract, but only to the extent and

amount represented by the degree or percentage of negligence or fault attributable to the Subcontractor or the Subcontractor's agents, representatives, subcontractors or suppliers. This obligation to indemnify shall be applicable and enforceable irrespective of whether such liability, damages, losses, claims bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than to the Work itself) including loss of use therefrom, and/or expenses were caused in part through the negligence of the Owner, Architect or Contractor, its agents, employees or other Subcontractors. Subcontractor also agrees to indemnify, and hold harmless the Contractor, Owner and Architect to the full extent required by any other indemnity terms contained in the Subcontract Agreement, these Subcontract Terms and Conditions, the Prime Contract and any other applicable Contract Documents. The Subcontractor also agrees that upon demand, it will defend Contractor, from any and all claims for which it is obligated to indemnify with counsel acceptable to Contractor. The Subcontractor agrees that it shall undertake the defense of Contractor to the maximum extent allowed by applicable law. This duty to defend shall also apply to the Owner and Architect and others, to the extent required by the Prime Contract and other Contract Documents.

5.4 The Subcontractor does agree to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for Unemployment Insurance and/or FICA, Pensions or Annuities, now or hereafter imposed by the Government of the United States, and/or by the Government of any state or territory of the United States, which are measured by the wages, salaries or other remunerations paid to persons employed by the Subcontractor on Work performed under the terms of this Subcontract Agreement.

5.5 It is understood and agreed it has been the practice of the Contractor to carry Builders' Risk Fire Insurance in the amount of its estimate of full insurance to insurable value, including subcontracts. To the extent that such insurance is carried by the Contractor on the Prime Contract, the Subcontractor may have an interest in the insurance policy; however, the provisions of this Section do not make it mandatory upon the Contractor to carry any insurance whatsoever for the benefit of the Subcontractor. Subcontractor agrees he will assume the responsibility to determine whether Builders' Risk Insurance is in force. In the event the Contractor should elect to carry Builders' Risk Insurance, and only in such event, the Subcontractor agrees to submit immediately, for the purpose of determining values under the insurance coverage, a complete breakdown of the Subcontract price showing materials, labor, expendable tools, supplies or any other thing or article of value, the cost of which is included in the Subcontract price stated in this Subcontract.

5.6 The Subcontractor agrees to indemnify and save harmless the Owner and Contractor against all costs or claims for transportation, freight and express, on men, materials and equipment to and/or from the job, and for all other incidental expenses in connection with his Work, and to prepay the transportation charges on all materials, etc., shipped.

5.7 The Subcontractor shall indemnify, defend, hold and save the Contractor harmless from any liability including costs, .

expenses and reasonable attorney's fees, for or on account of any patented or unpatented invention, article or appliance manufactured or used in the performance of this Subcontract, including their use by the Owner.

6. DISPUTE RESOLUTION

6.1 If at any time a dispute shall arise between the Contractor and the Subcontractor with respect to any matter or thing involved in this Subcontract Agreement or the Contract Documents, and which the parties hereto do not promptly resolve or which the Owner or his authorized representative cannot decide to the satisfaction of both parties hereto, then the written orders of the Contractor shall be followed. Any claim related to any such dispute shall be decided as follows:

6.2 All parties necessary to resolve a claim or other matter in dispute agree to be parties to the same dispute resolution proceeding. To the extent disputes between the Contractor and Subcontractor involve in whole or in part disputes between the Contractor and Owner, at the sole discretion of Contractor and upon request of Contractor or as otherwise directed by Contractor, disputes between the Subcontractor and Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner as provided in the Contract Documents.

6.3 In the event of any dispute or claim between Contractor and Owner which directly or indirectly involves Subcontractor's Work, or in the event of any dispute or claim between Contractor and Subcontractor which directly or indirectly involves a claim against Owner for either additional compensation or an extension of time under the Prime Contract, Subcontractor agrees to be bound to Contractor by all decisions, findings or determinations made by the person so authorized in the Prime Contract, by an administrative agency, court of competent jurisdiction, or arbitration panel, whether or not Subcontractor is a party to the proceedings before said person, agency, court or panel. If any dispute or claim is prosecuted or defended by Contractor, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by Contractor for such purpose and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorney's fees, incurred in connection therewith to the extent of Subcontractor's interest in such claim or dispute. It is expressly understood and agreed in connection with the determination of such claims or disputes that, as to any and all Work done and agreed to be done by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor, Contractor shall never be liable to Subcontractor to any greater extent than Owner is liable to Contractor.

6.4 If the dispute resolution provisions between the Contractor and Owner in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as Subcontractor and the dispute is not otherwise resolved pursuant to paragraphs 6.2 and 6.3, or if such dispute is only between Contractor and Subcontractor, then the parties shall resolve the dispute follows:

a. The parties shall select an arbitrator by mutual agreement. However, if the parties are unable to agree, then the

Contractor shall have the authority to select an arbitrator from the panel of construction arbitrators available with the Judicial Arbitrator Group in Denver, Colorado, or such other arbitrator as the Contractor may determine.

b. Any arbitration between the parties shall be conducted in conformance with the Construction Industry Arbitration Rules of the American Arbitration Association. The parties shall not be required to use AAA administration or arbitration services unless otherwise specifically agreed to by the parties to the dispute.

c. In the arbitration of a dispute between the parties, the arbitrator shall have the authority to award to the prevailing party, if any, as determined by the arbitrator, its reasonable costs and arbitrator's fees.

6.5 In the event of a dispute between the parties, the Subcontractor shall be responsible to the Contractor for all damages incurred by Contractor as a result of the Subcontractor's acts, omissions, breach of this Subcontract or any portion thereof and any other improper, tortious or unlawful conduct, including reasonable attorney's fees and costs incurred by the Contractor in dealing with any claims by the Owner or others arising from or related to the Subcontract Work.

6.6 In the event of any litigation or arbitration between the parties to enforce any provision of this Subcontract or asserting any claim for damages, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.

6.7 Unless otherwise agreed in writing, the Subcontractor shall continue the subcontract Work and maintain the project schedule during any dispute resolution proceedings.

7. SAFETY

7.1 The Subcontractor shall comply with all terms and conditions of the Waner Construction Inc. Safety Policy attached hereto as Exhibit E and any safety requirements set forth in the Prime Contract.

8. ADDITIONAL PROVISIONS

8.1 The Contractor and Subcontractor shall be mutually bound by the terms of the Subcontract and to the extent the provisions of the Prime Contract apply to the Subcontract Work they and each of them are hereby incorporated into this Subcontract as fully as if completely rewritten herein. The Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents assumes toward the Owner and Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Subcontract, the terms of this agreement

shall govern, except to the extent the Prime Contract imposes a more stringent requirement, in which case the terms of the Prime Contract shall control. The Subcontractor shall include the terms of this section 8.1 in all sub-subcontracts and purchase orders entered into by Subcontractor.

8.2 The Subcontractor agrees to comply with and not to violate any term, covenant, or condition of said Prime Contract and any other Contract Documents.

8.3 The Subcontractor shall furnish, if requested by the Contractor, sworn affidavits from time to time, in accordance with such forms as may be provided by the Contractor, which shall state amounts due or to become due, amounts paid, and any other information clearly to indicate the financial condition of the Subcontractor, insofar as it relates to labor and material furnished, and to be furnished, under this Subcontract, and the Contractor may take such steps as he may deem necessary to protect himself against any claim. If at any time the Contractor,

in its opinion shall determine that the Subcontractor's financial condition has become unsatisfactory, the Subcontractor shall furnish satisfactory security to the Contractor within three days after written notice sent by U.S. Mail to his last known address. In the event that the Subcontractor is in default of its obligation to furnish said security, the Contractor shall have the option to cancel or terminate this Subcontract. In case of such termination or cancellation the rights of the Contractor shall be the same as if the Subcontractor had failed to perform this Subcontract in whole or in part, as set forth in Section 4 herein. In addition, Contractor has the right but not an obligation to issue joint checks to Subcontractor and its Sub-Subcontractors and or suppliers for labor and materials supplied for the Work.

8.4 The Subcontractor agrees not to pay less than the scale of wages prescribed in the Prime Contract, or not less than the scale prescribed by law in case the Prime Contract provides no such scale. If the Subcontractor fails to comply with the preceding sentence, the Contractor shall have the option to cancel or terminate this Subcontract forthwith, in addition to exercising any or all other rights given Contractor hereunder in the event of a breach hereof, including but not limited to all penalties in the Prime Contract. In the event of such termination or cancellation, the rights of the Contractor shall be the same as if the Subcontractor has failed to perform this Subcontract, in whole or in part, as set forth in Section 4 herein.

8.5 During the performance of this Subcontract, the Subcontractor agrees that in the event of any strike, picket, sympathy strike, work stoppage, or other form of labor dispute at or affecting the construction site, whether that dispute or picket is in connection with the Contractor, the Subcontractor, the Owner, or any other contractor or subcontractor on this construction site, the Subcontractor will continue to perform the Work required herein without interruption or delay. In the event the Subcontractor fails to continue the performance of the Work included herein without interruption or delay, because of such picket or other form of labor dispute, the Contractor may terminate the services of said Subcontractor after giving twenty-four (24) hours written notice of an intent to do so, or the Contractor may invoke any of the rights set forth in Section 4 of this Agreement. Additionally, should the Subcontractor be party to one or more labor agreements he shall take all responsible action to avoid any work stoppage and, in the event a work stoppage should occur, he shall, within twenty-four

(24) hours, take any and all legal action provided for, or permitted by, such labor agreements in order to expedite the resumption of Work on this project and shall proceed with the Work as set forth herein.

8.6 During the performance of the Work required by this Subcontract the Subcontractor, its employees, and its suppliers will use such entrance or entrances to the construction site as may be designated from time-to-time by the Contractor. Further, the Subcontractor agrees to perform the Work included in this Subcontract at such times of the day and days of the week as may be designated by the Contractor.

8.7 The Subcontractor shall route all equipment and materials to be used in the execution of this Subcontract as designated by the Contractor. It is expressly agreed that the carrier so designated shall be the agent of the Subcontractor and not the agent of the Contractor.

8.8 This Subcontract includes all changes and addenda to date and constitutes the entire understanding of the parties. This Subcontract supersedes any prior proposals, understandings, correspondence and/or agreements.

8.9 The Subcontractor shall not assign nor sub-contract this Subcontract or any part thereof or any interest therein without first obtaining the written consent of the Contractor.

8.10 Subcontractor may not assign or attempt to assign any funds accrued or to accrue under this Contract without first obtaining the written consent of Contractor and no such assignment shall be made binding on Contractor unless and until accepted in writing by Contractor.

8.11 The Subcontractor consents to the Contractor's assignment of this Subcontract to the Owner or others to whom the Owner may make any such assignment as provided in the Prime Contract and other Contract Documents,

8.12 The Subcontractor shall furnish all guaranties, warranties, bonds, operating instructions, manuals and similar

items as required by the specifications and all Contract Documents, including but not limited to the Prime Contract.

8.13 All Sub-subcontracts entered into by Subcontractor shall incorporate, and require compliance with, the terms of the Subcontract Agreement, these Subcontract Terms and Conditions, the Prime Contract and all applicable Contract Documents,

8.14 The Subcontractor shall maintain as confidential any and all documents and information that the Contract Documents require be kept confidential.

8.15 If the Subcontractor makes use of the Contractor's hoisting facilities, he shall pay for this service unless otherwise stated herein.

8.16 The Subcontractor shall not place on the Work any equipment of which he is not the sole owner unless he obtains written permission from the Contractor.

8.17 Although drawn by Contractor, this Agreement shall in the event of any disputes over its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against either party.

8.18 Waiver of any breach hereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof.

8.19 In the event that any term or condition of this Agreement shall be determined to be invalid or unenforceable by an arbitrator or court of law, all other terms and conditions shall remain in full force and effect.

8.20 This Contract shall be construed under the laws of Colorado.

WANER CONSTRUCTION SUBCONTRACTOR SCHEDULE OF VALUES			PAGE 1 OF 1
PROJECT NAME:			
A	B	C	D
ITEM NO	DESCRIPTION OF WORK	SUBCONTRACTOR AND SUPPLIERS COMPLETING THIS PORTION OF THE WORK (List Subcontractor, Supplier, and Tier 2 Contractor)	SCHEDULED VALUE
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42			
43			
	GRAND TOTAL		\$ -

EXHIBIT A
Page 1 of 3

PAY APPLICATION submissions must consist of:

- 1) Exhibit A 2-pg. Pay Application & Certificate for Payment
 - 2nd page Continuation Sheet – list awarded/approved bid items with any Change Orders listed separately, and in the appropriate section
 - 1st page Certificate for Payment
 - Ensure 5% retention is held
 - Sign and date pay application

- 2) Exhibit B Conditional Partial Release
 - Line 8. CURRENT PAYMENT DUE from Exhibit A, pg. 1

Pay application delivery methods:

Email to: ap@wanerconstruction.com (PREFERRED) Confirmation email will be sent if no acknowledgment is received, please call (303)683-0099

Mail to: Waner Construction Company, Inc., 8950 Barrons Blvd., Unit 103, Highlands Ranch, CO 80129 (NO confirmation will be sent)

Pay application requests are due on or before 12pm **by the 23rd of each month** (unless otherwise notified) to ap@wanerconstruction.com; should this day fall on a weekend or holiday, pay application requests become due on the business day prior to the weekend or holiday. Pay Requests received after the deadline will not be included in the current month's billing to the owner and will be held for processing in the following month.

WANER CONSTRUCTION COMPANY'S SUBCONTRACTOR APPLICATION & CERTIFICATE FOR PAYMENT																							
<p>TO: WANER CONSTRUCTION CO., INC. 8950 BARRONS BLVD - UNIT 103 HIGHLANDS RANCH, CO 80129</p> <p>FR: SUBCONTRACTOR NAME: _____ _____ _____</p> <p>SCOPE OF WORK: _____ _____</p>	<p style="text-align: right;">PAGE 1 OF 2</p> <p>APPLICATION NO. <u>1</u></p> <p>APPLICATION DATE: 01/18/22</p> <p>PERIOD TO: 01/31/22</p> <p>PROJECT: <u>0</u></p>																						
<p style="text-align: center;">SUBCONTRACTOR'S APPLICATION FOR PAYMENT</p> <p>Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.</p>																							
<p>NOTES / COMMENTS</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">1. ORIGINAL CONTRACT SUM</td> <td style="width: 20%; text-align: right;">\$ -</td> </tr> <tr> <td>2. Net change by Change Orders</td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td>3. CONTRACT SUM TO DATE <small>(Line 1+ or - 2)</small></td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td>4. TOTAL COMPLETED & STORED TO DATE <small>(Column G on Continuation Sheet)</small></td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td>5. RETAINAGE:</td> <td></td> </tr> <tr> <td style="padding-left: 20px;">a. 5% of completed work (Column D+E on Cont.)</td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td style="padding-left: 20px;">b. 5% of stored material (Column F on Cont.)</td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td>6. TOTAL EARNED</td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td>7. LESS PREVIOUS CERTIFICATES FOR PAYMENT <small>(Line 6 from prior Certificate)</small></td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td>8. CURRENT PAYMENT DUE</td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td>9. BALANCE TO FINISH <small>(Line 3 less Line 6)</small></td> <td style="text-align: right;">\$ -</td> </tr> </table>	1. ORIGINAL CONTRACT SUM	\$ -	2. Net change by Change Orders	\$ -	3. CONTRACT SUM TO DATE <small>(Line 1+ or - 2)</small>	\$ -	4. TOTAL COMPLETED & STORED TO DATE <small>(Column G on Continuation Sheet)</small>	\$ -	5. RETAINAGE:		a. 5% of completed work (Column D+E on Cont.)	\$ -	b. 5% of stored material (Column F on Cont.)	\$ -	6. TOTAL EARNED	\$ -	7. LESS PREVIOUS CERTIFICATES FOR PAYMENT <small>(Line 6 from prior Certificate)</small>	\$ -	8. CURRENT PAYMENT DUE	\$ -	9. BALANCE TO FINISH <small>(Line 3 less Line 6)</small>	\$ -
1. ORIGINAL CONTRACT SUM	\$ -																						
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3. CONTRACT SUM TO DATE <small>(Line 1+ or - 2)</small>	\$ -																						
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8. CURRENT PAYMENT DUE	\$ -																						
9. BALANCE TO FINISH <small>(Line 3 less Line 6)</small>	\$ -																						
<p>The undersigned Subcontractor certifies that to the best of their knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all the amounts have been paid by the subcontractor for Work for which previous Certificates for Payment were issued and payments received from Waner Construction, and that current payment shown here in is now due.</p>																							
<p>SUBCONTRACTOR:</p> <p>By: _____ Date: _____</p>	<p style="text-align: center;">FOR WCCI INTERNAL USE ONLY</p> <p>PAY DATE: _____</p> <p>SUBCONTRACT AMOUNT _____</p> <p>BILLING TO DATE: _____</p> <p>CURRENT BILLING: _____</p> <p>10 % RETAINAGE _____</p> <p>TOTAL DUE: _____</p> <p>JOB # _____ CODE # _____</p> <p>APPROVED BY: _____</p>																						

EXHIBIT A
 Page 3 of 3

WANER CONSTRUCTION COMPANY CONTINUATION SHEET										
PAGE 2 OF 2										
APPLICATION AND CERTIFICATE FOR PAYMENT containing Subcontractor's signed Certification is attached.										
PROJECT NAME: <input type="text"/>										
APPLICATION NUMBER: <input type="text" value="1"/>										
APPLICATION DATE: <input type="text" value="01/18/22"/>										
PERIOD TO: <input type="text" value="1/31/22"/>										
A	B	C	D	E	F	G	H	I		
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION G from prior bill	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOT. COMP. & STOR. TO DATE (D+E+F)	% (G/C)	BALANCE TO FINISH	RETAINAGE 5%	
1		\$	\$	\$	\$	\$	#DIV/01	\$	\$	
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19		\$	\$	\$	\$	\$		\$	\$	
20	SUBTOTALS	\$	\$	\$	\$	\$		\$	\$	
21	Change Orders	\$	\$	\$	\$	\$	#DIV/01	\$	\$	
22		\$					#DIV/01	\$	\$	
23		\$					#DIV/01	\$	\$	
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34	SUBTOTALS	\$	\$	\$	\$	\$	#DIV/01	\$	\$	
		\$	\$	\$	\$	\$	#DIV/01	\$	\$	



TO: Subcontractors

FROM: Waner Construction Co., Inc. Accounts Payable Team

RE: Supplier Lien Releases

PROJECT: 2301. – Shake Shack Interquest

Attached are three project specific supplier lien releases. Please review the definitions below to ensure the appropriate release is submitted.

SUPPLIER LIEN RELEASES:

Subcontractor Supplier Unconditional **Partial** Release: No balance due through the billing period. Additional materials will be ordered from the supplier.

Subcontractor Supplier Conditional **Partial** Release: Balance due to a supplier for pay application billing period AND additional materials or services to be purchased or used. A joint payment will be issued to you and your supplier for the open balance through the end of the billing month.

Subcontractor Supplier Unconditional Full & Final Release: Account paid in full and no additional materials to be ordered from this supplier. All project-related transactions with this supplier are completed.

NOTE: Failure to submit an appropriate release will delay payment processing.

Revised 09/2021

EXHIBIT C

WANER CONSTRUCTION COMPANY, INC. CHANGE ORDER REQUEST FORM

Subcontractor _____ Date _____

Project _____ Contract # _____ COR # _____

This agreement between Owner/General Contractor and General Contractor/Subcontractor consists of the following changes:

Description of Change

Reference Documents

Reservations or Exclusions

Impact to Schedule _____ Days

Impact to Price _____

New Contract Price _____

All remaining terms and conditions of the contract remain in full force and effect.

Signed: _____
(Owner or Contractor) (Contractor or Subcontractor)

Date _____ Date _____

EXHIBIT D

Page 1 of 4

Insurance and Indemnification Requirements Applicable To All Work Performed by Subcontractors, Design-Build Subcontractors and Designers for Waner Construction Company, Inc.

References to Subcontractor or Subcontractors in this document shall mean Subcontractors, Design-Build Subcontractors and Designers.

- A.) Subcontractor shall maintain and require any Sub-Subcontractors to maintain indemnification obligations and insurance for the minimum amount required by the general contract that this subcontract applies to or as outlined below, whichever limits and coverages are higher.

The Subcontractor shall furnish an ACORD form certificate of insurance on forms provided by the Subcontractor's Insurance Carrier to show that the above insurance is in force stating policy numbers, dates of expiration, limits of liability and coverages thereunder. Furnishing certificates of insurance does not, in any way, obligate Contractor or their agents to approve, evaluate, or notify Subcontractor of Subcontractor's compliance or non-compliance with terms and conditions as set forth in this Exhibit D. In no way shall receipt of certificate of insurance negate, reduce, limit or waive Contractor's right to enforce the terms and conditions of this Exhibit D.

Certificate of Insurance completed with Certificate Holder listed as:

Waner Construction Company, Inc.
c/o IMA Certificate Compliance
1705 17th Street, Suite 200
Denver, CO 80202

Subcontractor shall register with Waner's certificate compliance system. You will be receiving a registration e-mail from certificatecompliance@imacorp.com. Please follow the instructions in the e-mail to complete your registration with IMA Certificate Compliance. Your broker will then be required to upload a certificate on your behalf. Certificates received through the U.S. Postal Service will not be acceptable. If Subcontractor's agent has questions or needs clarification, he or she may contact our broker via e-mail at certificatecompliance@imacorp.com.

The Subcontractor may secure, at the Subcontractor's own expense, such additional insurance as the Subcontractor deems necessary.

- B.) Minimum required insurance limits (coverage on an occurrence basis):

1.) Commercial General Liability (CGL)

a.) Commercial General Liability with limits of Insurance of not less than \$1,000,000 each occurrence, \$1,000,000 personal and advertising injury, \$2,000,000 Annual Aggregate, and \$2,000,000 products and completed operations aggregate

b.) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

c.) CGL coverages shall be written on ISO Occurrence form *CG 00 01 04 13* or a substitute form providing equivalent coverage, coverage shall include

- *Contractual liability (including construction contracts)*
- *Coverage must be primary and non-contributory with any insurance maintained by additional insured party*

- No separation of insured exclusion
- The following exclusions are absolutely prohibited and shall not be included in Subcontractor's policy if applicable to the work:
 - No damage to Work performed by Subcontractor exclusion (CG 22 94 or similar).
 - No exclusion for subsidence, which is specifically prohibited for any work involving excavation, soil stabilization, earth retention, concrete, structural steel, landscaping, waterproofing, fire protection, and plumbing.
 - No "residential" exclusion that would void or restrict coverage due to the nature of the Work.
 - No EFIS exclusion

Coverages in 'c.' must be added by endorsement if not provided by the subcontractor's standard general liability policy.

d.) Contractor, Owner and all other parties required of the Contract Documents, shall be included as Additional Insured. The endorsement shall include that any person or organization that Subcontractor is required to add as an Additional Insured under the contract or agreement shall be included as an Additional Insured (CG 20 38 04 13 or its equivalent).Coverage must include both ONGOING Operations AND COMPLETED Operations (CG 20 10 04 13and CG 20 37 04 13 or similar as permitted by law).Vicarious forms of additional insured endorsements will not be accepted. The policy shall be endorsed to be primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds.

e.) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least Eight (8) years after the completion of the Work.

2.) Automobile Liability

- a.) Business Auto Liability with limits of at least \$1,000,000 each accident.
- b.) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
- c.) If hauling of hazardous waste is part of the Scope, Automobile Liability Insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles, and include MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).
- d)General Contractor, Owner and all other parties required of the General Contractor, shall be included as insured on the auto policy.

3.) Commercial Umbrella Liability or Excess Liability

- a.) Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over Subcontractor's primary Employer's Liability, Commercial General Liability and Commercial Automobile Liability with minimum limits of \$1,000,000. Higher limits may be required by Contractor or Owner on a project by project basis.
- b.) All coverages and terms required under the Commercial General Liability, Automobile Liability and Employer's Liability must be included on the Excess/Umbrella Liability policy.
- c.) Umbrella or Excess Liability coverage for such additional insured shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability, and Employers Liability coverages maintained by the Subcontractor.

4.) Worker's Compensation and Employers Liability

- a.) Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits under the Worker's Compensation laws of any applicable jurisdiction in which the Work is to be performed.
- b.) Employers Liability Insurance limits shall be of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.

5.) Professional Liability

- a.) This Section is applicable to Subcontractor and any sub-subcontractor of any tier that is providing any professional services, including but not limited to: design, architecture, engineering, testing, surveying, or design/build services, temporary engineering, engineered excavations and shoring systems, post-tension supply, structured steel, specialized millwork that is performance specified, roofing or waterproofing systems, curtainwall, mechanical, fire protection systems, electrical, fire alarm systems.
- b.) Subcontractor and all Sub-subcontractors providing professional services shall provide and maintain Professional Liability Insurance coverage. The policy coverage shall be effective (retroactively, if applicable) from the date of commencement of all professional services in connection with the Work
- c.) Both Subcontractor and any and all Sub-Subcontractors shall have proof of professional liability coverage in the amount of \$1,000,000 per claim with a maximum deductible of \$25,000 to be paid by Subcontractor by providing the certificates and other proof of insurance as required by Section A herein
- d.) The Subcontractor shall, upon request of Waner, furnish a copy of its Professional Liability policy. The Professional Liability policies shall be continued in effect for Eight (8) years following final payment to the Subcontractor.

6.) Pollution Liability

- a.) This Section is applicable to Subcontractor and any sub-subcontractor of any tier that are providing work related to environmental services, building enclosure systems, plumbing, heating, ventilation, air conditioning, drywall, insulation, building foundations, or any work which includes Microbial Matter, Mold, Fungi, or Bacteria and any work which will involve the use of hazardous materials. Subcontractor and all applicable sub-subcontractors must provide and maintain a separate Pollution Liability Insurance policy including coverage for but not limited to claims arising out of all hazardous material and hazardous waste remediation, storage, transportation, clean-up and disposal. Pollution Liability policy must include contractual liability coverage to insure the indemnification obligation of this Agreement.
- b.) The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Subcontractor.
- c.) Pollution Liability Insurance policy shall name Contractor and all other parties as required under the Subcontract Documents as Additional Insureds.
- d.) The Subcontractor and Sub-Subcontractor shall maintain pollution liability coverage for the statute of repose following completion of the project. Should mold coverage be required and be provided by a claims made form, the coverage shall be maintained annually, following completion, for 8 years.

7.) Builders' Risk

- a.) It is the responsibility of the Subcontractor to inquire about Builders' Risk coverage. b.) If required in the Contract Documents with Owner:
Contractor and Subcontractor waive all rights against (1) each other and any of their Vendors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their Subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the

extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as fiduciary. Subcontractor shall require of Subcontractor's agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

8.) Installation Floater

If required by Contractor or not covered by the Builders Risk insurance, Subcontractor shall obtain an Installation Floater to cover that portion of the work to be constructed, installed, altered, or repaired by Subcontractor. If Contractor or Owner, or other party as required by the Contract Documents, have a financial interest, those parties shall be listed as a loss payee.

9.) Equipment Floater

Subcontractor shall maintain at its sole cost and expense insurance to protect its own equipment, tools and materials against risk of loss with sufficient limits to cover the value of all of the equipment, tools and materials Subcontractor may use in performance of the Work. Subcontractor is solely responsible for any deductibles, self-insured retentions or uninsured losses for any reason arising out of Subcontractor's obligations of this Section. Coverage shall include equipment leased/borrowed/rented by Subcontractor.

C.) Waivers of Subrogation

All insurance coverages maintained by Subcontractor shall include a waiver of any right of subrogation of the insurers thereunder in favor of Additional Insureds and all of their respective assigns, subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under any such policy (Workers Compensation – where permitted). Subcontractor further waives all claims and all rights of subrogation against Additional Insureds' other contractors and all of their respective assigns, subsidiaries, affiliates, employees, insurers and underwriters for loss of, or damage to, Subcontractor's Work, tools, machinery, equipment, material, supplies, or any other losses within the scope of any insurance maintained by Subcontractor. If any of the Additional Insureds is partially or wholly self-insured, then the waiver of subrogation shall apply as if they were in fact covered by their own insurance.

D.) Notice of Cancellation

Subcontractor must certify that the Contractor will receive 30 days advance notice of any cancellation (except 10 days for non-payment).

MANDATORY INSURANCE REQUIREMENTS

Following is an example of the Certificate of Insurance (COI) that is required for your subcontract agreement with Waner Construction Company, Inc.

Please forward this to your insurance company for project specific insurance.

Subcontractors shall not begin work on a job site until the proper insurance has been submitted to Waner Construction Company, Inc.'s Certificate Compliance System indicated in section A of Exhibit D.

EXHIBIT E WANER CONSTRUCTION, INC. SAFETY POLICY

A) SAFETY

1. Waner Construction Company is committed to controlling both human suffering and accident costs on our projects. All Subcontractors must abide by Waner Construction Company's Basic Safety Policy, available upon request, and the provisions of the Occupational Safety and Health Act as outlined in the Construction Standards, OSHA 2079, 29CFR, Part 1926.
2. Subcontractor shall, at its own expense, conform to the basic safety policy of the Contractor, and comply with all specific safety requirements promulgated by any governmental authority, including without limitation, the requirements of the Occupational Safety and Health Act 1970 and the Construction Safety Act of 1969 and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer such Acts.
3. Subcontractor shall have and exercise full responsibility for compliance hereunder by its agents, employees, material men, and subcontractors generally, and in particular in respect to its portion of the work on this project; shall itself comply with said requirements, standards, and regulations, and require and be directly responsible for compliance therewith on the part of its said agents, employees, materialmen, and subcontractors, and shall receive, respond to defend, and be responsible for all citation, assessments, fines or penalties which may be incurred by reason of its failure or failure on the part of its agents, employees, materialmen, or subcontractor to so comply.

B) BASIC SAFETY POLICY PROVISIONS

1. OSHA compliance officers are welcome on Waner Construction Company's projects with proper management representation of the contractors and all subcontractors and agents.
2. Weekly Tool Box Safety Meetings are required. These meetings should be held by qualified personnel with a written record of topics and attendance going to the Contractor's Project Manager. In lieu of this, a Subcontractor can require his employees and agents to attend the Weekly Tool Box Safety Meeting held by the Contractor.
3. Subcontractor shall provide copies of SDS for all chemicals used by their employees and a copy of their safety program, and, when appropriate, a site specific program, e.g., for fall protection, for steel erection, for scaffolding, for trenching and excavation, for silica dust compliance, or otherwise as needed due to the type and nature of construction processes for a given job site.
4. All accidents requiring greater than on-site first-aid and all near misses involving high potential for bodily injury or property damage must be immediately reported to the Contractor. A copy of the Subcontractor's investigative report must be promptly delivered to the Contractor's Project Manager.
5. The Subcontractor shall have a competent person assigned and present on the jobsite at all times. Such person shall be designated by the Subcontractor prior to the commencement of the work and approved by the Contractor. In the event the Contractor, in its sole discretion, shall determine that the person assigned is not satisfactory, Contractor shall have the right to require the Subcontractor to assign a different competent person to the job.
6. Housekeeping must be kept up for the sake of accident free and efficient production. Storage of equipment, materials, and refuse must be in an orderly fashion. Clean up of refuse caused by a Subcontractor will be done by the Contractor if he deems it a safety hazard. The cost of this work will be charged back to the Subcontractor.
7. Guardrails and Perimeter Protection are installed to prevent access to dangerous wall and floor openings. If a Subcontractor removes and fails to replace a guardrail or perimeter protection line immediately, the Contractor will replace it and charge the cost of this work back to the Subcontractor.
8. All excavation and trenching work performed by a Subcontractor must be in strict accordance with OSHA Specifications. Banks must be laid back to an appropriate angle of repose for the soils involved or an adequate shoring or tieback system installed to prevent collapse.
9. Personal Protective Equipment of the type approved by OSHA shall be supplied by the Subcontractor to his employees and agents.

HARD HATS - Are required to be worn 100% of the time. (OSHA 1926.100 Head Protection)

EYE PROTECTION - Is required to be worn 100% of the time.

FALL PROTECTION - Must be worn when there is a possibility of falls from 6-feet or greater.

10. First-Aid and Fire Protection Equipment. Adequate first-aid supplies must be provided by the Subcontractor for his employees. Approved type Fire Extinguishers for emergency use in the immediate area of his operations must be supplied by the Subcontractor.
11. Absolutely no illegal drug or alcohol use will be permitted on any project, on premises of the Corporation, Corporation's Project Location, or in any Corporate Vehicle. Any violation of this policy is cause for immediate removal from such premises and termination of this Contract, in the sole discretion of the Contractor.
12. Subcontractor agrees not to remove safety control measures (except on authority of Contractor's Superintendent) and to replace such safety control measures promptly. Failure to make such replacement will authorize Contractor to do such work and charge the costs thereof to Subcontractor.
13. If working with materials containing silica, the Subcontractor is responsible for knowing if the silica levels exceed the permissible exposure limits (PEL). OSHA requires that engineering and work practice controls be applied first to reduce contamination to below the PEL. If exposures cannot be brought down to below the PEL, respiratory protection should then be used to reduce exposure. In the event that respirators are required, the Subcontractor must have a respiratory protection program in place.
14. When utilizing scaffold, the Subcontractor must have a competent person on site at all times when work is occurring and when scaffold is being erected and dismantled. Additionally, the Subcontractor must inspect and certify their own scaffold prior to each work shift or when working conditions have changed. The scaffolding equipment itself should comply with all OSHA 29 CFR 1926, Subpart L standards.

**WANER CONSTRUCTION COMPANY, INC.
SUBCONTRACTOR'S LIST OF
MATERIAL SUPPLIERS & EQUIPMENT RENTAL VENDORS**

PROJECT NAME / NUMBER: Shake Shack Interquest - # 2301.

SUBCONTRACTOR NAME: National Tab

SUBCONTRACTOR BILLING CONTACT INFORMATION

Name: _____ Email: _____

Phone#: _____ Fax#: _____

The following is a list of Material Suppliers and Rental Service Vendors scheduled to be used on the above stated project for Waner Construction:

Supplier / Equipment Vendor Name/Address Phone #

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Subcontractor Signature: _____ Date: _____

Note: Failure to return this form to our accounting department at ap@wanerconstruction.com will delay processing of your Pay Applications. EVERY Material Supplier and Equipment Rental Vendor used on this project shall be listed above. Should there be changes or substitutions to your scheduled list of vendors, promptly submit an amended form or notification to our accounting department.

Unconditional Full and Final Lien Releases for each and every supplier or equipment rental vendor is required prior to retention release.

WANER CONSTRUCTION COMPANY, INC. TIER 2 SUBCONTRACTOR LIST

PROJECT NAME / NUMBER: Shake Shack Interquest - # 2301.

SUBCONTRACTOR NAME: National Tab

SUBCONTRACTOR BILLING CONTACT INFORMATION

Name: _____ Email: _____

Phone#: _____ Fax#: _____

The following is a list of TIER 2 SUBCONTRACTORS scheduled to be used on the above stated project for Waner Construction:

<u>Supplier / Equipment Vendor Name/Address</u>	<u>Phone #</u>
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Subcontractor Signature: _____ Date: _____

Note: Failure to return this form to our accounting department at ap@wanerconstruction.com will delay processing of your Pay Applications. Should there be changes or substitutions to your list of scheduled subcontractors, promptly submit an amended list or notification to our accounting department. It is your responsibility to ensure that your subcontractor's Insurance coverages are in effect prior to working on our project and in compliance with the requirements of your subcontract agreement. Refer to Exhibit D in your subcontract agreement and forward to your subcontractor. Waner Construction shall be listed as Additional Insured.

Unconditional Full and Final Lien Releases will be required from all Tier 2 subcontractors prior to retention release.