

NOTICE AND CLAIM FOR MECHANIC'S LIEN

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

IN THE OFFICE OF THE
RECORDER OF DEEDS OF COOK COUNTY

ROCK AND WALL CONSTRUCTION CO., )
Claimant, )
vs )
TRC CONSTRUCTION CORP., )
AMERICAN NATIONAL BANK & )
TRUST CO., TRUSTEE UNDER, )
TRUST NO. 59782, BANK OF )
LINCOLNWOOD, )
Defendants. )

"NOTICE TO OWNER

Do not pay the contractor
for this work or material
unless you have received
from the Contractor a waiver
of lien by, or other satis-
factory evidence of payment
to, the Subcontractor or
Materialman."

NOTICE & CLAIM FOR LIEN
IN AMOUNT OF

\$44,920

17-04-444-009-0000

The claimant, ROCK AND WALL CONSTRUCTION CO., of 755 W.
Cornelia, Chicago, County of Cook, State of Illinois, being a supplier of
drywall and carpentry for the construction project on the real estate
described below, hereby files a Notice and Claim for Lien against BANK OF
LINCOLNWOOD, being the Lender located at 4433 W. Touhy Avenue, Chicago,
Illinois, TRC CONSTRUCTION CORP., being the General Contractor for said
construction project located at 812 N. Franklin, Chicago, Illinois, and
AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, TRUSTEE
UNDER TRUST NO. 59782, hereinafter referred to as "Owner", located at 33
N. LaSalle Street, Chicago, IL., and said last named person is the Owner for
the construction project being constructed on the real estate commonly known
as 812-814 North Franklin, Chicago, in the county of Cook, State of Illinois.

86025875

This document prepared by
EMALFARB & SWAN
660 La Salle Place
Highland Park, IL 60035
(312) 432-6900

Permanent Index No. 17-04-444-009



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That, on March 14, 1984, said AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, TRUSTEE UNDER TRUST NO. 59782 was the Owner of record of the following described land in the County of Cook, State of Illinois, to-wit:

Lot 7 (except the North .88 feet thereof, and except that part of Lot 7 taken for the North Western Elevated Railroad and except that part conveyed to the Chicago Rapid Transit Company, by Document Number 10977693) in Block 35, in Johnston, Roberts and Storr's Addition to Chicago in the West 1/2 of the South East 1/4 of Section 4, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

and TRC CONSTRUCTION CORP. was authorized and knowingly permitted by the Owner to construct the improvement thereof.

That on March 4, 1984, said TRC CONSTRUCTION CORP. made a written contract with Claimant ROCK AND WALL CONSTRUCTION CO. to provide carpentry and drywall work, a copy of said written contract is attached hereto as Exhibit "A" for and in said improvement, and that, on October 27, 1984, the Claimant ROCK AND WALL CONSTRUCTION CO. completed thereunder all required to be done by said contract.

That the Claimant alleges upon information and belief that a sworn statement has been submitted to the Owner, or its agent, by TRC CONSTRUCTION CORP., being the above described General Contractor, and that said sworn statement is in writing and contains the names of persons furnishing materials and labor for and in said improvement, and that the Claimant's name and correct amount due Claimant for the work described above has been included in this sworn statement.

That at the special instance and request of said TRC CONSTRUCTION CORP., the Claimant, ROCK AND WALL CONSTRUCTION CO. furnished extra and additional materials at and extra and additional labor on said premises of the value of \$83,801.00 as fully set forth in an account thereof herewith filed and made part hereof, marked Exhibit "B", and did complete same on October 27, 1984.

That said Contractor, TRC CONSTRUCTION CORP., is entitled to credits on account in the amount of \$92,851.00 leaving due, unpaid and owing to the Claimant, after allowing all lawful credits, the sum of \$44,920.00, for

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which with interest, the Claimant claims a lien on said land and improvements, and on the monies or other considerations due or to become due from the Owner under said contract against said Contractor and Owner.

ROCK AND WALL CONSTRUCTION CORP.  
CLAIMANT

BY:

  
\_\_\_\_\_  
Its Attorney and Agent

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

VERIFICATION

The Affiant, John A. Krenger, Jr., being first duly sworn on oath, deposes and says that he is President of the Claimant; that he has read the foregoing Notice and Claim for Lien, knows the contents thereof, and states that all the statements therein contained are true, to the best of his information and belief.

*John A. Krenger, Jr.*  
\_\_\_\_\_

Subscribed and Sworn to  
before me this 17<sup>th</sup> day  
of January, 1985.

*John P. Pate*  
\_\_\_\_\_  
Notary Public

EMALFARB & SWAN #12082  
660 LaSalle Place  
Highland Park, Illinois 60035  
(312) 432-8900

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## PROOF OF SERVICE BY MAIL

I, Suzanne Doering, a non-attorney on oath, state that on this 17<sup>th</sup> day of January, 1986, I served this Notice and Claim for Mechanic's Lien by mailing a copy of said Notice by certified mail, return receipt requested, limited to addressee only, to: TRC CONSTRUCTION CORP., 812 North Franklin Street, Chicago, Il., AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, T/U/T #59782, 33 N. LaSalle Street, Chicago, IL 60690, BANK OF LINCOLNWOOD, 4433 W. Touhy Avenue, Lincolnwood, IL., postage prepaid, by depositing same in the U.S. Mail Box located in Highland Park, Illinois before the hour of 5:00 p.m.

Suzanne Doering

Subscribed and Sworn to before me this 17<sup>th</sup> day of January, 1986.

John Santelone  
Notary Public

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SUBCONTRACT 25875

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DATE: March 13, 1984  
CONTRACTOR: TRC Construction Corp., 213 W. Institute Place, Chicago, IL 60611  
SUBCONTRACTOR: Rock & Wall Construction Co., 755 W. Cornelia, Chicago, IL 60611  
SUBCONTRACTOR FOR: Carpentry and drywall work  
PROJECT: 812-814 North Franklin  
OWNER: Eight Twelve Franklin Partners  
ARCHITECT: Pappageorge Haymes, Ltd.  
GENERAL CONTRACT: dated September 21, 1983  
SUBCONTRACT PRICE: Fifty Six Thousand Dollars  
Dollars (\$ 56,000.00 )  
PROGRESS ESTIMATE DATE: Fifteenth day of each month  
PERFORMANCE BOND AND PAYMENT BOND: NONE  
RETAINAGE PERCENTAGE: 10%

(The foregoing terms are incorporated into and more fully explained in the provisions that follow.)

TRC Construction Corp. Illinois  
Rock & Wall Construction Co. Illinois  
"Contractor," and "Subcontractor," with offices at the address shown above, intending to be legally bound hereby agree as follows:

1. **Work.** Subcontractor shall furnish all labor, materials, tools, equipment, supervision and services necessary to prosecute and complete in all respects the work identified and described in Schedule A attached hereto (the "Work"), being a portion of the work required of Contractor under the General Contract (the "Contract") between Owner and Contractor, identified above. The Work shall be performed by Subcontractor in a good and workmanlike manner strictly in accordance with the Contract Documents listed in Schedule B and incorporated herein by reference (the "Contract Documents"). The Contract Documents are intended to include all labor, materials, tools, equipment, supervision and services whether specified therein or not, necessary to complete the Work.

2. **Price.** Subject to all of the other provisions of this Subcontract, Contractor shall pay to Subcontractor for the due and full performance of the Work the Subcontract Price set forth above (the "Price"), except that if all or a portion of the Work is to be performed on a unit price basis, then the Price set forth above shall be deemed an estimated total price for the Work and the actual Price shall be computed in accordance with the lump sum prices, if any, and the unit prices set forth in Schedule C based on actual quantities determined in accordance with the Contract Documents and as approved in writing by the Architect (referred to herein and hereinafter as the "Architect").

3. **Progress Payments.** As soon as practicable after the execution of this Subcontract, Subcontractor shall submit to Contractor a schedule of values of the various portions of the Work, and by a date if required by the Contractor, to enable Contractor to prepare a schedule of values for the entire Contract. Such schedule shall be prepared in such form and supported by such data as the Architect or Contractor may direct, and shall be subject to Contractor's approval. The total of scheduled values shall equal the Price, and shall be divided in such manner as will facilitate progress payments to Contractor and Subcontractor on the basis of the Work satisfactorily in place. Each scheduled item shall include its proper share of Subcontractor's overhead and profit.

On or before the progress estimate date identified above, Subcontractor shall submit to Contractor an itemized progress estimate supported by such data as Contractor may require, showing the estimated value of work completed based on Subcontractor's approved schedule of values and on the conditions for payment under the Contract, including (without limitation) conditions relating to material and equipment delivered to and suitably stored on the site and title to the materials and equipment. Each such progress estimate shall show also the amount of all previous payments under the Subcontract and the amount of current retainage, and shall be accompanied by a duly executed and acknowledged sworn Subcontractor's statement of persons furnishing materials and labor in form satisfactory to Contractor, and by a waiver of lien in form satisfactory to Contractor.

Subcontractor's progress estimate shall be used in the preparation of Contractor's application for payment to Owner under the Contract. Contractor shall pay to Subcontractor, upon receipt of payment from the Owner, an amount equal to the value of Subcontractor's completed work, to the extent allowed and paid by Owner on account of Subcontractor's Work, less all previous payments and less the amount of current retainage. "Previous payments" shall include all amounts theretofore paid on account of the Work, all charges for materials or services furnished by Contractor and properly chargeable to Subcontractor, and all costs incurred by Contractor properly chargeable to Subcontractor as obligations of Subcontractor. "Current retainage" shall be calculated by multiplying the value of the Work completed and qualified for payment by the retainage percentage set forth above.



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**4. Final Payment.** A final payment, consisting of the unpaid balance of the Price, shall be made within sixty (60) days after the last of the following to occur: (a) full completion of the Work by Subcontractor, (b) final acceptance thereof by the Architect and Owner, (c) final payment by Owner to Contractor under the Contract, (d) the furnishing of evidence (satisfactory to Contractor and Owner) by Subcontractor to Contractor that the Subcontractor has paid in full all persons furnishing labor or materials in connection with the Work including any taxes or governmental charges with respect thereto or with respect to the Work, and that neither Subcontractor nor any person claiming under or through Subcontractor has filed or has the right to maintain a lien or other claim against the Owner, the Contractor, Contractor's surety, if any, or the Project premises, and (e) the delivery of all guarantees, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items required of Subcontractor or its suppliers with respect to the Work. Acceptance of final payment by the Subcontractor shall act as a release of all claims the Subcontractor or any person claiming under or through him may have against the Owner, the Contractor, the Contractor's surety, if any, or the Project premises.

**5. Payment of Labor, Supplies and Material.** Subcontractor will receive the payments made by the Contractor and will hold the right to receive such payments as a trust fund to be applied first to the payment of its subcontractors, laborers and suppliers for the Work, including any amounts payable to any employee benefit plan covering such persons, and Subcontractor will so apply the payments from Contractor before using any part thereof for any other purpose. The Subcontractor shall also require each of its subcontractors to make similar payments to its sub-subcontractors and suppliers. Subcontractor shall, as often as requested by Contractor, furnish an affidavit showing the names and addresses of all persons who shall have furnished labor or materials for the Work and the amount due or to become due to each such person. Progress payments may, in the discretion of Contractor, be made in the form of checks payable jointly to Subcontractor and its suppliers or its subcontractors. If Subcontractor shall fail to pay promptly, when due, for all labor, supplies and materials furnished in connection with the performance of the Work, Contractor may, after five (5) days' written notice to Subcontractor, pay the amount of such liabilities and recover the amount thereof from Subcontractor, directly or by the application of any portion of the Price then, or thereafter becoming, due hereunder.

**6. Time of Completion.** Completion of the Work and its several parts within the time allotted or reasonably contemplated under the Contract is of the essence of this Subcontract. Therefore, Subcontractor agrees: (a) to provide, if requested, a schedule for completion of the Work, (b) to provide at the Project site (identified on page 1 hereof) the materials, equipment, laborers and supervision necessary to begin the Work upon Contractor's order to do so, and (c) to perform the Work and all parts thereof promptly, diligently and in such order and sequence as the Contractor may direct to assure the efficient, expeditious and timely prosecution of the entire work under the Contract, including furnishing sufficient forces, supervision, equipment and materials, at such times and for such periods, as the Contractor may direct. Contractor may upon forty-eight (48) hours prior written notice require Subcontractor to provide additional labor and supervision at the Project site. Contractor reserves the right to modify any such progress schedule with respect to the required sequence or duration of the Work or any portion thereof, and Contractor makes no representation that Subcontractor will be able to commence, prosecute, or complete the Work in accordance with any progress schedule.

**7. Extensions of Time.** If for reasons beyond its control Subcontractor shall be materially delayed at any time in the progress of the Work under such circumstances as would entitle the Contractor to an extension of time under the Contract, Subcontractor shall be entitled to a corresponding extension of time for completion of the Work hereunder, provided that Subcontractor shall have filed with Contractor written claim for such extension that complies with the requisites for making a claim under the Contract and in sufficient time to permit Contractor to file such a claim against Owner for an extension or other relief under the Contract. If Subcontractor shall be materially delayed by the willful and wrongful act or omission of Contractor, the time for the completion of the Work shall be extended for a period equal to the reasonably estimated period of delay, as determined by Contractor. Anything herein to the contrary notwithstanding, no extension of time shall be granted unless a written claim therefor shall be presented to Contractor within forty-eight (48) hours after the commencement of the delaying event or condition. In no event shall the Subcontractor be allowed any pecuniary compensation for any such delays unless otherwise allowed by the Owner.

**8. Changes.** Contractor may, without invalidating the Subcontract or any bond given hereunder, order additions, deletions, or other modifications to the Work, such changes to be effective only upon written order of Contractor. Any adjustment to the Price or to the time for completion of the Work shall be made in accordance with the applicable provisions of the Contract. Notwithstanding any inability to agree upon any adjustment or the basis for an adjustment, Subcontractor shall, if directed by Contractor, nonetheless proceed in accordance with the order, and the Price and time of completion shall be adjusted in accordance with the foregoing. If requested by Contractor to justify the adjustment, Subcontractor shall submit forthwith its detailed estimate of the value of and time involved in any such change or proposed change, including unit costs if requested, and shall furnish detailed records of costs or savings actually realized as a result of any such change. If any such changes diminish the quantity of work to be done, they shall not form the basis for a claim by Subcontractor for loss of anticipated profits. Any additions and deletions will be made at the respective unit prices, if applicable. Anything herein to the contrary notwithstanding, no adjustment to the Price or to the time for completion of the Work shall be allowed the Subcontractor by reason of any change unless a written claim therefor shall be presented to the Contractor within forty-eight (48) hours following the receipt of notice of such change from the Contractor.

If the Contract is terminated, this Subcontract shall be thereupon likewise terminated, and compensation to the Subcontractor shall be made in accordance with the provisions of the Contract or in the absence of applicable provisions then on an equitable basis based solely on direct labor and material costs incurred by Subcontractor to the time of termination as substantiated by evidence satisfactory to Contractor.

**9. Relationships.** Subcontractor shall be bound by the decisions of the Architect with respect to the quality and quantity of the Work, meaning of the Contract Documents, a certainty of persons or organizations performing the Work, and other matters set forth in the Contract Documents, to the same extent that Contractor may be bound thereby. Subcontractor's Work shall conform to any additional specifications, drawings, or explanations furnished by the Architect for the purpose of detailing and illustrating the Work.

Contractor shall have the right to direct the prosecution of the Work and to coordinate such Work with the work of others, and Contractor shall have, with respect to Subcontractor, the same rights and powers as the Owner has reserved to itself with respect to Contractor for the performance of the applicable portions of the Contract. Subcontractor shall cooperate with, and shall not delay, impede, or otherwise impair the work of others participating in the construction Project.

If Subcontractor is damaged by the act of the Owner, for which act the Contract affords benefits and remedies solely to Contractor, then Subcontractor shall be derivatively entitled to the benefits to be achieved by the pursuit of such remedies, as Subcontractor's interest may appear, provided, however, Contractor shall not be required to file any claim or take any other action against Owner on behalf of Subcontractor unless Subcontractor shall provide indemnure for the payment of, and shall pay for, all costs and expenses, including attorneys' fees, that may be incurred by Contractor in proportion to the amount of Subcontractor's claim in the pursuit of such remedies. Contractor shall not be required on behalf of Subcontractor to file any claim or take any action against any person other than Owner over any claim or action that is not asserted in good faith or that would reasonably extend the date for a substantial final payment under the Contract.

Nothing contained herein shall create any contractual relation between the Owner and Subcontractor or any of its subcontractors or suppliers. By an appropriate agreement, written where legally required for validity, the Subcontractor shall require each of its subcontractors (hereinafter a "Sub-subcontractor") to the extent of the Work to be performed by the Sub-subcontractors, to be bound to the Subcontractor by the terms of the Contract Documents, and to assume toward the Subcontractor all the obligations and responsibilities which the Subcontractor, by this Subcontract, assumes hereunder. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Sub-subcontractor so that

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the sub-subcontracting thereof will not prejudice such rights, and shall allow to the Sub-subcontractor the benefit of all rights, remedies and redress against the Subcontractor that the Subcontractor, by the Contract Documents, has against the Contractor.

Any part of the Work performed for the Subcontractor by a Sub-subcontractor shall be pursuant to a written Sub-subcontract between the Subcontractor and such Sub-subcontractor which the Subcontractor has, prior to the execution of any such Sub-subcontract, submitted to the Contractor to demonstrate to the Contractor's reasonable satisfaction that each such Sub-subcontract contains provisions that:

- (a) require that such Work be performed in accordance with the requirements of the Contract Documents;
- (b) require submission to the Subcontractor of applications for payment under each Sub-subcontract to which the Subcontractor is a party, in reasonable time to enable the Subcontractor to apply for payment in accordance with the provisions of Paragraphs 3 and 4;
- (c) waive all rights the contracting parties may have against one another or that the Sub-subcontractor may have against the Contractor or the Owner for damages caused by fire or other perils covered by the property insurance described in Paragraph 13;
- (d) recognize the rights of the Contractor pursuant to the Conditional Assignments of Sub-subcontracts under this Paragraph 9 and require the Sub-subcontractor upon notice by the Contractor that the Contractor has terminated this Subcontract with the Subcontractor pursuant to the terms of Paragraph 21 hereof and that the Contractor has elected, pursuant to this Paragraph 9 to retain the Sub-subcontractor pursuant to the terms of its Sub-subcontract with the Contractor) to complete the unperformed obligations under such Sub-subcontract and, if requested by the Contractor, to enter into an agreement in form and substance satisfactory to the Contractor evidencing the fact that the Sub-subcontractor is bound to the Contractor under its Sub-subcontract in the manner in which it had been bound to the Subcontractor; and
- (e) require the Sub-subcontractor to carry and maintain liability insurance in accordance with Paragraph 13.

and contain no provisions inconsistent with any of the foregoing subparagraphs (a) through (e)

If an Application for Payment is not approved for a cause which is the fault of the Subcontractor, or if the Subcontractor fails to make a payment which is properly due to a particular Sub-subcontractor, the Contractor may pay such Sub-subcontractor directly, less the amount to be retained under its Sub-subcontract. Any amount so paid by the Contractor shall be deducted from any payment or payments thereafter due and/or shall be repaid to the Contractor by the Subcontractor immediately upon demand of the Contractor.

The Contractor shall have no obligation to pay, or to see to the payment of, any monies to any Sub-subcontractor. Nothing contained herein shall be deemed to create any contractual relationship between the Contractor and any Sub-subcontractor or to create any rights in any Sub-subcontractor against the Contractor or the Owner.

The Subcontractor shall promptly advise the Contractor of any claim or demand by a Sub-subcontractor claiming that any amount is due to such Sub-subcontractor or claiming any default by the Subcontractor in any of its obligations to such Sub-subcontractor.

As an inducement to the Contractor to execute this Subcontract, the Subcontractor hereby conditionally assigns to the Contractor all Sub-subcontracts executed by the Subcontractor in connection with the Work and in accordance with the requirements of the Contract Documents, subject to the following terms and conditions:

- (a) this assignment, although a present assignment, shall become effective only upon a termination of this Agreement pursuant to Paragraph 21 and only as to those Sub-subcontracts which the Contractor accepts in writing; and
- (b) the Contractor shall assume only those assigned Sub-subcontracts which it accepts, as provided in the foregoing subparagraph (a) and shall become liable only for the obligations thereunder which accrue after the date of termination.

This paragraph shall serve as the instrument of assignment at such time as the assignment becomes effective pursuant to the terms hereof. The Subcontractor agrees, however, upon the Contractor's request, to execute whatever instruments the Contractor may request to confirm such assignments. The Subcontractor does hereby constitute and irrevocably appoint the Contractor as his attorney-in-fact in his name, place and stead to execute such documents, in the event that the Subcontractor fails to do so within five (5) days after demand. This power of attorney is irrevocable and coupled with an interest.

**10. Assignment.** Subcontractor shall not assign, transfer, subcontract or otherwise dispose of the Subcontract, or any part thereof, nor assign any monies due or to become due hereunder, except with the prior written consent of the Contractor. Any assignment of this Subcontract consented to by Contractor shall not operate to relieve Subcontractor of its primary responsibility to Contractor for the due and full performance hereof, nor shall it create any contractual relationship between Contractor and such sub-subcontractor or assignee, and Subcontractor shall continue to be liable to Contractor for all acts and omissions of its sub-subcontractors and assignees.

**11. Bonds.** Unless the word "none" appears in the space opposite "performance bond and payment bond" on page 1 hereof, Subcontractor, at its own expense, shall obtain from a commercial surety acceptable to Contractor a bond (a) for the due and complete performance of each of Subcontractor's obligations hereunder and (b) for the timely payment of all charges for labor, services and materials furnished for the prosecution of the Work. Such bonds shall be for a sum in liquidated damages equal to the amount set forth in the appropriate space on page 1 hereof, shall be in a form acceptable to Contractor and shall be delivered to Contractor within seven (7) days after the execution hereof. If according to the foregoing provisions Subcontractor is not required to furnish such bonds, Subcontractor shall, if requested, submit to Contractor a current financial statement, and Contractor reserves the right at any time to require Subcontractor to furnish such bonds, but at Contractor's expense.

**12. Indemnity.** Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner, their officers, agents and employees, jointly and against all claims, damages, losses or expenses (including costs and attorney's fees) by reason of liability imposed by law upon Contractor or Owner for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to property, including loss of use thereof, arising out of or in consequence of the performance of the Work, provided such injury to persons or damage to property is or claimed to be due in whole or in part to the wrongful or negligent act or omission of the Subcontractor, his employees or agents.

**13. Insurance.** Until completion and final acceptance of the Work, Subcontractor shall maintain and pay for insurance coverage with respect to the Work, of the types and with the minimum limits set forth in Schedule D attached hereto. Such coverage shall be maintained in form and with companies acceptable to Contractor, Architect and Owner, and shall, notwithstanding Schedule D, meet the applicable requirements imposed under the Contract or by any governmental authorities having jurisdiction over the Work. Each policy of insurance required hereinabove shall provide for 30 days' notice to Contractor prior to cancellation or material change in coverage.

Subcontractor shall be responsible for any desired coverage against damage or loss to materials, facilities, tools, equipment, plant, scaffolds, bracing and

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similar items not covered by Owner's or Contractor's fire insurance policy (with builder's risk endorsement), <sup>3 7 5</sup> including any materials or equipment of the Owner in transit or not delivered to the Project site under the control of the Subcontractor.

Subcontractor shall furnish Contractor certificates of the insurance required hereunder prior to commencing the Work, showing Owner and Contractor as additional insureds, and a copy of each lost-time accident report made to Subcontractor's insurance carriers. Subcontractor shall cooperate with its insurers to facilitate the adjustment of any claim or demand arising out of operations within the scope of the Work. Nothing contained in this Paragraph 13 shall relieve Subcontractor of its indemnity obligations set forth elsewhere in the Subcontract.

**14. Liens.** Subcontractor shall defend, indemnify and hold harmless Contractor, Contractor's sureties and Owner from any lien or claim filed or made by any third person or firm on account of alleged non-payment for labor, materials, or services furnished or performed as a part of the Work. Further, Subcontractor, pursuant to Section 21 of Chapter 82 of the Illinois Revised Statutes, hereby expressly and completely waives and relinquishes on behalf of itself, its successors and assigns and his Sub-subcontractors, any and all claims of, or right to, mechanic's or materialmen's lien, under the statutes of the State of Illinois, against, or with respect to, the Project site or the Work or any portion thereof, or any improvements or materials thereon, or with respect to any unpaid portion of the Price which may be due at any time pursuant hereto. Subcontractor shall deliver to Contractor written verification of such waiver of lien by Subcontractor in form and substance required by Contractor. Such verification shall be recorded in the office of the Recorder of Deeds for the county in which the Project site is located. It is expressly agreed that the effect of this waiver shall not be impaired, affected, or diminished by the provisions of this Subcontract relating to the production, from time to time, of written waivers of liens or sworn statements, or by any other provisions apparently inconsistent with this waiver. Subcontractor hereby acknowledges that this Subcontract has been executed and entered into by Contractor in reliance upon the aforesaid waiver of rights by Subcontractor. Subcontractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise.

**15. Labor.** Subcontractor shall conform to the labor policy of Contractor and shall not employ any persons or engage in any activities which cause, or are likely to cause, a strike, work stoppage, or other similar concerted labor action. Subcontractor shall comply with all wage scales, reporting obligations and other labor requirements established under the Contract or Contract Documents and by any governmental authority having jurisdiction. Subcontractor shall maintain and exercise control over all employees engaged in the performance of the Work, provided, however, Subcontractor shall remove or cause to be removed from the Project premises any such employee whose presence is determined by the Owner or Contractor to be detrimental to the Owner's best interests. Subcontractor agrees that all disputes as to jurisdiction of trades will be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality of the Project.

**16. Taxes.** Subcontractor shall pay, or cause to be paid, when due all taxes of every kind imposed, levied, or assessed by any governmental authority with respect to the Work, including taxes for labor, materials and equipment utilized therein and expressly including all sales, use, personal property, excise and payroll taxes. Subcontractor, upon request of Contractor, shall furnish satisfactory evidence of such payments.

**17. Defective Work.** Subcontractor shall provide safe, sufficient and proper facilities at all times for the inspection of the Work by the Contractor, Owner and Architect, or their representatives. Subcontractor shall, commencing within twenty-four (24) hours after receiving written notice from Contractor, promptly take down and remove all portions of the Work which the Contractor or Architect shall condemn as unsound, improper, or in any way failing to conform to the Contract or the Contract Drawings, and shall make good all Work damaged or destroyed thereby, all at Subcontractor's expense. If Subcontractor fails to correct any such defective Work, Contractor may order Subcontractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, however, this right of Contractor to stop the Work shall not give rise to any duty on his part to exercise this right for the benefit of Subcontractor or any other person or entity. This right shall be in addition to, and not in restriction of, Contractor's rights under Paragraph 21 hereof.

**18. General.** Subcontractor shall, at its own expense:

- (a) obtain all necessary permits and licenses and comply with all statutes, ordinances, rules, regulations and orders of any governmental or quasi-governmental authority applicable to the performance of the Work, and be responsible for compliance therewith and correct any violations thereof, including, without limitation, the provisions of equal opportunity clauses applicable to the Project which are set forth in 41 Code of Federal Regulations Mod-14 (1977), 41 C.F.R. Mod-2504 (1977) and 41 C.F.R. Mod-7414 (1977), as may be amended from time to time, all of which are incorporated herein by reference;
- (b) prepare and submit to Contractor all necessary shop and erection drawings, plans and diagrams, and furnish all necessary samples, catalogue cuts, laboratory and inspection reports and engineering calculations, in sufficient time to permit the orderly and timely prosecution of the Work;
- (c) remove, at least weekly or more often as directed by Contractor, all rubbish and surplus and waste material resulting from the prosecution of the Work and all tools, scaffolding and equipment not currently required in the prosecution of the Work, if such removal is not accomplished promptly, Contractor may remove the same at the expense of Subcontractor;
- (d) not remove from the Project site any material, appliances or equipment delivered thereto without the consent of the Contractor;
- (e) comply with the reasonable recommendations of the Owner's, Contractor's and Subcontractor's insurance carriers or their retaining brokers;
- (f) conform to the basic safety policy of Contractor, and comply with all specific safety requirements promulgated by Owner or Contractor, including any such requirements made a part of the Contract Documents as required by the Occupational Safety Health Act, if such safety requirements are not promptly and properly performed by Subcontractor, Contractor may fulfill such requirements at the expense of Subcontractor;
- (g) protect the Work from damage and pilferage until accepted by the Owner;
- (h) repair all damage to the Work or property of others caused by Subcontractor;
- (i) furnish temporary facilities, and if requested by the Contractor pay for the cost of all water and electric current used by Subcontractor;
- (j) if requested by Contractor have an approved representative at all job meetings;
- (k) prepare and make available to Owner and Contractor as-built drawings covering Subcontractor's Work;
- (l) hereby agree that any back charges of either party under this Subcontract shall be the cost of all field and office materials, tools, equipment, insurance and taxes, plus 10% for overhead and profit, and

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(m) furnish all design, labor, engineering, materials, tools, equipment, supervision and services necessary to complete the Work in a good and workmanlike manner, and the Contract Documents shall not limit or restrict Subcontractor's duties or obligations with respect to the Work.

**19. Guarantee.** Subcontractor guarantees that the Work shall be free from defects and shall conform to and meet the requirements of the Contract and the Contract Documents; and shall furnish any separate guarantee for the Work, or portions thereof, required under the Contract or Contract Documents. Subcontractor agrees to make good without cost to Contractor or Owner to the satisfaction of the Owner, any portion or portions of the Work which prove defective within one year (or such longer period as may be specified in the Contract or Contract Documents) from the date of acceptance of the Project by Owner. Subcontractor agrees to defend, indemnify and save harmless Contractor against any claims, damages, losses or expenses (including attorneys' fees) made by Owner against the Contractor under the Contract or otherwise with respect to the Work. Acceptance of final payment by the Subcontractor shall not release the Subcontractor from any liability hereunder for defective work.

**20. Patents.** Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner from and against loss, liability, damage, cost, or expense (including attorneys' fees) on account of infringement or alleged infringement of any patent rights by reason of the Work or materials used by Subcontractor. Subcontractor shall pay all license fees and royalties pertaining to the Work.

## 21. Default.

(a) In the event Subcontractor shall fail to perform any of its obligations hereunder, including without limitation, its refusal or neglect to supply a sufficiency of skilled laborers or materials of the proper quality and quantity, its failure to prosecute the Work with promptness and diligence, or its causing stoppage, delay or interference with the work of the Contractor or other subcontractors, or in the event the Subcontractor shall become insolvent or commit an act of bankruptcy, or should there be filed by or against it a petition in bankruptcy or for an arrangement, reorganization or appointment of a receiver, then in any such events, each of which shall constitute a default hereunder, Contractor shall have the right, after forty eight (48) hours written notice to Subcontractor, to (i) remedy, or cause any surety to remedy, such default, utilizing such persons or firms and such equipment and materials as may be necessary and recover from the Subcontractor the amount of any loss or damage, whether liquidated or unliquidated, suffered or incurred as a result of such default, including, without limitation, attorneys' fees, penalties, increased costs and loss of profits, in which event Contractor may deduct and withhold from payments otherwise due Subcontractor any of the foregoing amounts, which deductions shall be deemed credits or back charges against the Price, or (ii) terminate this Subcontract.

(b) In the event of termination of this Subcontract, Contractor may use Subcontractor's material and equipment to complete the Work, or may complete the Work in any other expedient manner and the Subcontractor shall receive no further payments until the Work is complete. Upon completion, if the unpaid balance of the Price exceeds Contractor's cost of completion (including compensation to Architect for additional services made necessary by Subcontractor's default), such excess shall be paid to the Subcontractor; but if such cost of completion exceeds the unpaid balance of the Price, the Subcontractor shall pay the difference to the Contractor immediately upon demand. Contractor is hereby granted a security interest in the equipment, plant tools and materials of Subcontractor which shall from time to time be located upon the Project site, to secure the performance of this Subcontract and the completion of the Work, and Contractor may file or record this Subcontract as a security agreement, financing statement or part of a financing statement under the provisions of any Uniform Commercial Code.

(c) The foregoing remedies for default by Subcontractor shall be considered distinct, separate and cumulative and shall be in addition to any other right and remedy given elsewhere in this Subcontract or now or hereafter existing at law or in equity, including any right to the recovery of attorneys' fees.

(d) Subcontractor shall have the rights and remedies available at law or in equity for a breach of this Subcontract by Contractor, provided, however, any alleged breach or default by Contractor hereunder shall be deemed waived unless Subcontractor shall within seven (7) days of any such alleged breach or default give written notice to Contractor specifying the details thereof.

**22. Notices.** All written notices provided for in this Subcontract shall be deemed given only when personally delivered, given by telegram with written confirmation copy following, or mailed postage prepaid to the parties at the addresses set forth on page 1 of this Subcontract. Either party may, from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent.

**23. Inspection of Site.** Subcontractor acknowledges that its authorized representatives have personally inspected the Project site and satisfied itself as to the physical condition thereof and the locally prevailing labor, transportation, utilities, weather and storage conditions.

**24. Equipment.** Any tools, equipment, scaffolds, ladders and similar items and all materials and building supplies of Contractor leased to or used by Subcontractor shall be leased or used by Subcontractor in an as-is condition without any warranty, express or implied, by Contractor, and Subcontractor agrees to assume all risk for injury to person or property from all causes in connection with the use or operation of the same.

## 25. Miscellaneous.

(a) All matters relating to the validity, effect, or interpretation of this Subcontract shall be governed by the laws of the state identified as part of Contractor's address, or if such address be omitted, then this Subcontract shall be governed by the laws of Illinois.

(b) As regards the subject matter hereof, this writing constitutes the entire agreement between the parties.

(c) If any provision of this Subcontract conflicts with a provision of the Contract or the Contract Documents, the Contract or Contract Documents provision shall govern.

(d) This Subcontract shall not be modified or amended in any way except (i) by a writing executed by both parties or (ii) as otherwise expressly provided herein.

(e) This Subcontract shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

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(f) Where the context requires, the neuter shall include the masculine and feminine and the singular shall include the plural, and vice versa.

(g) The Contract Documents are available for examination by the Subcontractor at all reasonable times at the office of Contractor. Subcontractor hereby represents and agrees that it has carefully examined and understands this Subcontract and the other Contract Documents, has brought its experience to bear upon the Contract Documents and has reported any error, inconsistency or omission therein to Contractor, has investigated the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed, and that it enters into this Subcontract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the Contractor, the Architect or the Owner, or of any of their respective officers, agents, servants, or employees.

(h) With respect to the Work to be performed and furnished by Subcontractor hereunder, Subcontractor agrees to be bound to Owner, and to Contractor, by each and all of the terms and provisions of the Contract Documents, and to assume toward Owner and Contractor all of the duties, obligations and responsibilities that Contractor by those Contract Documents assume toward Owner, and Subcontractor agrees further that Owner and Contractor shall have the same rights and remedies as against Subcontractor as Owner under the terms and provisions of the other Contract Documents has against Contractor with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. Subcontractor shall not be relieved of any of its obligations under this Subcontract by the activities or duties of the Architect. The terms and provisions of this Subcontract with respect to the Work to be performed and furnished by Subcontractor hereunder are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of the Contract Documents.

IN WITNESS WHEREOF, the parties have duly executed this Subcontract, in duplicate, as of the date set forth on page 1 hereof

TRC Construction Corp.

Contractor

By

Title:

*TH*  
Tom Horwitz Secretary/Treasurer

Subcontractor

*John Krenger*  
John Krenger

By

Title

*Pres.*

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SCHEDULE A

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## WORK

The Work shall consist of: All carpentry and drywall work per contract documents.

## SCHEDULE B

### CONTRACT DOCUMENTS

The Contract Documents shall consist of:

Drawings by Pappageorge Haymes, Ltd., consisting of title sheet, site survey sheet, sheets A1-0 through A1-6; A2-0 through A2-5; A3-1 through A3-2; A4-1 through A4-3; A5-1; 5-1; 5-2; PEM-1 through PEM-5 dated 2/28/84.

## SCHEDULE C

### UNIT PRICES

(For use if Price is to be computed wholly or partially on a unit price basis)

Item

Unit Price

### LUMP SUM PRICES

Item

Price

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SCHEDULE D  
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3 5 0 2 5 8 7 5

Subcontractor and any of its subcontractors shall, with respect to the Work, maintain and pay for insurance coverages as follows:

<u>TYPE</u>	<u>LIMITS</u>
Workmen's Compensation Policy	Statutory and \$500,000 Employer's Liability
Comprehensive General Liability Policy including but not limited to:	\$500,000 per occurrence Bodily Injury and Property Damage
(A) Premises/Operation	
(B) Blanket Contractual	
(C) Products/Completed Operations	
(D) Personal Injury (Exclusion C deleted)	
(E) Broad Form Property Damage	
(F) Explosion, Collapse & Underground Hazards Insured	
(G) Employees as insured	
Comprehensive Automobile Liability including all owned, non-owned and hired vehicles and equipment	\$500,000 Bodily Injury and Property Damage
Commercial Umbrella Policy	\$1,000,000 per occurrence
(A) Retention Limit Maximum \$10,000	

Sub-contractor shall include as additional named insureds on all insurance policies the following: TRC Construction Corp., American National Bank as Trustee under Trust #59782 and all Agents and Beneficiaries of said Trust, and Pappageorge Haymes, Ltd.

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EXHIBIT "B"  
SUMMARY OF EXTRAS

\$56,000.00-	original contract for common area improvements
+ \$83,801.00	Time & Cost of materials (\$22.50/hr carpentry labor) 6% overhead 6% profit
<u>\$139,801.00</u>	- New Contract
\$ 94,881.00	- PAID
=====	
\$ 44,920.00	- balance
\$28,000.00	Time and Material
\$ 5,600.00	Original Retention
\$ 2,060.00	Cedar for cancelled work
\$ 4,820.00	1-week time
\$ 1,200.00	Unpaid Dumpster Charges
<u>\$ 3,240.00</u>	Overtime
\$44,920.00	

NOTE: The above work was performed on the Building's tenant improvements.

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