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## Nebraska Judicial Branch

## Case Summary

In the District Court of Douglas County  
 The Case ID is CI 18 0003210  
 Corrado Homes, LLC v. Batis Development  
 The Honorable Thomas A Otepka, presiding.  
 Classification: Contract Disputes  
 Filed on 04/13/2018  
 This case is Open as of 04/13/2018

## Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE Corrado Homes, LLC 9007 F Street Omaha NE 68127	Ryan P Watson 4926 Grant Street Omaha NE 68104 402-213-9524
Alias is Corrado Construction Defendant ACTIVE Batis Development Company 5601 S. 59th St. Ste. C Lincoln NE 68516	Nicholas F Sullivan 10330 Regency Parkway Dr., #1 Omaha NE 68114 402-397-2200

## Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	04/13/2018	\$35.00
Plaintiff	Filing Fee - State	04/13/2018	\$1.00
Plaintiff	Automation Fee	04/13/2018	\$8.00
Plaintiff	NSC Education Fee	04/13/2018	\$1.00
Plaintiff	Dispute Resolution Fee	04/13/2018	\$0.75
Plaintiff	Indigent Defense Fee	04/13/2018	\$3.00
Plaintiff	Uniform Data Analysis Fee	04/13/2018	\$1.00
Plaintiff	J.R.F.	04/13/2018	\$6.00
Plaintiff	Filing Fee-JRF	04/13/2018	\$6.00
Plaintiff	Legal Aid/Services Fund	04/13/2018	\$6.25
Plaintiff	Complete Record	04/13/2018	\$15.00
Plaintiff	Service Fees	04/27/2018	\$19.15

## Financial Activity

No trust money is held by the court  
No fee money is held by the court

## Payments Made to the Court

Receipt	Type	Date	For	Amount
294802	Electronic Trans	04/13/2018	Corrado Homes, LLC	\$83.00
			Petition	\$35.00
			Filing Fee - State	\$1.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$6.00
			Legal Aid/Services Fun	\$6.25
			Complete Record	\$15.00

## Register of Actions

04/30/2019 Notice-Take Deposition  
This action initiated by party Batis Development Company  
Re: Leslie McCann 5/2/19 1pm /mg  
Image ID N19120H64D01

04/30/2019 Notice-Take Deposition  
This action initiated by party Batis Development Company  
Re: Michael Corrado 5/3/19 1pm /mg  
Image ID N19120H5ED01

03/19/2019 Signed Scheduling Order  
This action initiated by Thomas A Otepka  
AMD / RT eNotice Certificate Attached  
Image ID 001846634D01

03/13/2019 Note from Court Staff  
P/order emailed to Bailiff /mg

03/13/2019 Stipulation  
This action initiated by party Batis Development Company  
JOINT Re: AMD Sched Order /mg  
Image ID N190720W6D01

03/12/2019 withdraw Pleading  
This action initiated by party Batis Development Company

RE: Mot to Compel / RT  
Image ID N19071GF2D01

03/11/2019 Notice-Service  
This action initiated by party Corrado Homes, LLC

RE: Discovery / RT  
Image ID N19070D3MD01

02/28/2019 Motion Filed  
This action initiated by party Batis Development Company  
Re: AMD Sched Order 3/15/19 10am CR 414 /mg  
Image ID N190590C8D01

02/12/2019 Motion-Compel  
This action initiated by party Batis Development Company  
3/15/19 10am CR 414 /mg  
Image ID N19043UM8D01

02/08/2019 Order-Trial  
This action initiated by Thomas A Otepka  
trl 10/2/19 @ 9:00 am eNotice Certificate Attached

Image ID 001820989D01

02/08/2019 Signed Scheduling Order  
This action initiated by Thomas A Otepka  
eNotice Certificate Attached  
Image ID 001820992D01

01/02/2019 Notice-Service  
This action initiated by party Corrado Homes, LLC  
Re: interr & req for prod JB  
Image ID N19002ACWD01

01/01/2019 Answer  
This action initiated by party Corrado Homes, LLC  
kr  
Image ID N19001650D01

10/10/2018 Proposed Scheduling Order  
This action initiated by Nicholas F Sullivan  
Image ID 001700548D01

08/24/2018 Proposed Scheduling Order  
This action initiated by Ryan P Watson  
Image ID 001706234D01

08/13/2018 Notice Issued  
The document number is 00559730  
Notice of Intent to Dismiss  
Ryan P Watson ryan@schirberandwagner.com  
Image ID D00559730D01

08/13/2018 Notice Issued

The document number is 00559729  
Notice of Intent to Dismiss  
Nicholas F Sullivan nsull@eslaw.com  
Image ID D00559729D01

05/24/2018 Answer  
This action initiated by party Batis Development Company  
al  
Image ID N18144P70D01

04/27/2018 Return Summons/Alias Summons  
The document number is 00531195

JB

Served 04/26/2018  
Personal Service  
Image ID N18117BXOD01

04/13/2018 Summons Issued on Batis Development Company  
The document number is 00531195

Summons

e-mailed  
Image ID D00531195D01

04/13/2018 Praecipe-Summons/Alias  
This action initiated by party Corrado Homes, LLC

s1

Image ID N18103HAOD01

04/13/2018 Complaint-Praecipe  
This action initiated by party Corrado Homes, LLC

praecipe filed separate s1

Image ID N18103HACD01

## Judges Notes

03/15/2019

03-15-2019 Otepka

Atty appearances: R. Watson for Plaintiff and N. Sullivan for  
Defendant. Hearing on Motion to Amend PSO. Findings. PSO (Amended)  
to be prepared.



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

CORRADO HOMES, LLC d/b/a  
CORRADO CONSTRUCTION,  
a Nebraska Limited Liability Company,

Plaintiff,

v.

BATIS DEVELOPMENT COMPANY,  
a Kansas Corporation,

Defendant.

CASE NO. CI 18-\_\_\_\_\_

COMPLAINT

COMES NOW, Plaintiff, Corrado Homes, Inc, a Nebraska Limited Liability Company ("Corrado"), by and through counsel of record, Ryan P. Watson of Schirber and Wagner, LLP, and for its cause of action against the Defendant state and allege as follows:

1. That, at all time material herein, the Plaintiff is a Nebraska Limited Liability Company organized under and doing business with its principal place of business at 9007 F Street, Omaha, Nebraska 68127.
2. Upon information and belief, at all times material herein, Defendant, Batis Development Corporation ("Batis") is a foreign corporation duly organized and existing under and by virtue of the laws of the State of Kansas, doing business in Omaha, Douglas County Nebraska.
3. That on or about June 2, 2014, Corrado, as a construction subcontractor, entered into an agreement with Batis, as contractor, to perform masonry work within Douglas County, Nebraska. Said agreement is attached herein as Exhibit

A.

4. That in all respects Corrado complied with the terms of the Agreement for the services alleged herein.
5. Corrado has made demand upon Batis for payment of the sums due of \$62,779.56, but Batis has failed, refused, and neglected to pay same.

#### COUNT 1 – BREACH OF CONTRACT

6. Plaintiff re-alleges and incorporates by reference paragraphs 1-5 as if each were fully set forth herein.
7. For those reasons stated Defendant has breached their contractual duty to the Plaintiff.

#### COUNT 2 – NEBRASKA CONSTRUCTION PROMPT PAY ACT

8. Plaintiff re-alleges and incorporates by reference paragraphs 1-5 as if each were fully set forth herein.
9. For those reasons stated, Defendant has violated the Nebraska Construction Prompt Pay Act, Neb. Rev. Stat. §§ 45-1201 et seq. and shall be entitled to damages, interest, and attorney fees.

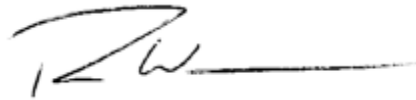
#### COUNT 3 – QUANTUM MERUIT

10. Plaintiff re-alleges and incorporates by reference paragraphs 1-5 as if each were fully set forth herein.

11. As a result thereof, Batis received the benefit of the work completed at a substantial cost and expense of Corrado.
12. No justification exists at law for said benefit enjoyed by Batis at the expense and cost of Corrado.
13. For those reasons stated Defendant has breached their quasi-contractual duty to the Plaintiff.

WHEREFORE, Plaintiff prays this court find in favor of the Plaintiff and award damages no less than \$62,779.56 plus interest on said sums, costs, attorney's fees, and any other relief deemed just and lawful.

CORRADO HOMES, LLC, Plaintiff



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Ryan P. Watson, #25597  
SCHIRBER & WAGNER, LLP  
11515 S. 39<sup>th</sup> Street, Suite 102  
Bellevue, Nebraska 68123  
[ryan@schirberandwagner.com](mailto:ryan@schirberandwagner.com)  
(402)592-2800  
Attorney for Plaintiff

## Standard Form of Agreement Between Contractor and Subcontractor

Project Information	
<b>Project #</b>	<b>FFC-020</b>
<b>Title</b>	Freddy's Frozen Custard & Steakburgers
<b>Address</b>	2920 S. 180 <sup>th</sup> Street
<b>City, State, Zip</b>	Omaha, NE 68130
<b>Country</b>	USA

Contract Information	
<b>Contract #</b>	<b>FFC-020-100</b>
<b>Issue Date</b>	6/17/14
<b>Subject</b>	Masonry
<b>Retainage Percentage (%)</b>	
<b>Work</b>	10 %
<b>Stored Mat'l.</b>	0 %

Issued By	
<b>Contact</b>	M. Wittenburg
<b>Company</b>	Batis Development Co.
<b>Address</b>	2933 SW Woodside Drive Suite 200
<b>City, State, Zip</b>	Topeka, KS 66614
<b>Country</b>	USA
<b>Phone</b>	(785) 272-4400
<b>Fax</b>	(785) 271-0944

Subcontractor	
<b>Contact</b>	Wes Rowe
<b>Company</b>	Corrado Construction
<b>Address</b>	1605 S. 94 <sup>th</sup> Street
<b>City, State, Zip</b>	Omaha, NE 68124
<b>Country</b>	USA
<b>Phone</b>	(402) 917-0926
<b>Fax</b>	

### Scope of Work

We hereby propose to furnish all materials and necessary equipment and perform all labor necessary to complete the following work:  
Masonry

### Inclusions

Included in the Contract are the following:  
See attached "Exhibit A - Scope of Work"

### Exclusions

Excluded from the Contract are the following:  
See attached "Exhibit A - Scope of Work"

### Clarifications

Clarifications for the Contract are as shown below:

### Schedule of Values

Included in the Contract are the following schedule of values:

Item No.	Description	Quantity	Units	Unit Price	Total Price
1	04005 Masonry	1	LS	\$106,400.00	\$106,400.00

Subtotal = \$106,400.00

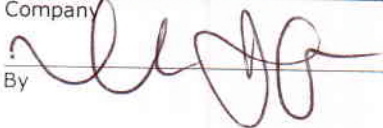
Sales Tax = Included

Total = \$106,400.00

**This document, when fully executed, as accepted, shall constitute authorization to proceed with the work described herein.**

Subcontractor:

Corrado Construction  
Company

By 

7/21/14  
Date

Response:  Accept  Do Not Accept

Batis Development Co.  
Company

By

Date



# SUBCONTRACT

BATIS DEVELOPMENT - GENERAL CONDITIONS OF SUBCONTRACT  
SUBCONTRACT NO. FFC-020-100

This Subcontract is entered into on June 17, 2014 by and between **BATIS DEVELOPMENT**("Contractor"), with its principal office at **2933 SW WOODSIDE DRIVE, SUITE 200, TOPEKA, KANSAS 66614** and **CORRADO CONSTRUCTION** ("Subcontractor") with its principal office at **1605 S. 94<sup>TH</sup> STREET, OMAHA, NEBRASKA 68124**.

Contractor has entered into a contract with the following Owner:

**Batis Development Company**  
**2933 SW Woodside Drive, Suite 200**  
**Topeka, KS 66614**

To perform certain construction work identified as:

**Freddy's Frozen Custard & Steakburgers**  
**2920 S. 180<sup>th</sup> Street**  
**Omaha, NE 68130**

1. **EFFECTIVENESS OF AGREEMENT.** The Agreement shall not be effective for any purpose, and Subcontractor is not authorized to perform any of the work in the Agreement, until both Contractor and Subcontractor have signed the Agreement. All terms defined in the Agreement shall have the same meanings herein.
2. **SUBCONTRACT PRICE.** As full compensation for satisfactory performance of the Subcontract, Contractor agrees to pay Subcontractor in the manner described below, subject to all provisions of the Subcontract:
  - (a) the firm fixed-price of **\$106,400.00** subject to additions and deductions as provided for in the Subcontract; and/or
  - (b) unit prices in accordance with the attached Unit Prices and estimated quantities; and/or
  - (c) time and material rates and prices in accordance with the attached Labor and Material Costs; and/or
  - (d) other, as identified in an attachment.The firm fixed-price, unit prices, time and material rates and prices and/or other identified manner of payment are referred to as the "Subcontract Price."

## 2.1 SUBCONTRACT DOCUMENTS.

2.2 **DESCRIPTION.** Subcontractor agrees to furnish at its own costs and expense all labor, equipment, tools, scaffolding, materials, supplies, power, taxes, fees, insurance, permits, certificates, guarantees, warranties and other things necessary to construct, complete, repair and maintain the work in a workmanlike manner in accordance with the Contract Documents as defined in the Agreement between Contractor and to the satisfaction of Owner and Contractor the portion of work of the prime contract and all work incident to it as outlined in the specific conditions set forth in the Contract.

2.1.2 The Contract, consisting of the entire and integrated Agreement between Owner and Contractor, as more particularly though not exclusively specified in the General, Special, Supplementary and other Conditions, Drawings, Specifications, Addenda, reference standards or provisions of any nature. The Contract Documents for this subcontract shall consist of the Agreement and the exhibits or riders attached thereto, the prime contract between Owner and Contractor (including general, supplementary and other conditions), drawings, plans, specifications, all addenda issued prior to execution of the prime contract; and all modifications issued after execution of the prime contract. A modification is (i) a written amendment to a contract signed by all parties to that contract, (ii) a change order, (iii) a written interpretation issued by the architect, engineer, or other authorized representative of Owner ("Owner's Representative") or (iv) a written order for a minor change in the work issued by Owner's Representative. All documents which form the prime contract between Owner and Contractor are incorporated herein as a part of the Agreement





with the same force and effect as though fully set forth herein and all references to the prime contract or the Contract Documents shall include all of the above items. Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner by all terms and provisions of the prime contract, and by all decisions, rulings and interpretations of Owner or Owner's Representative. Copies of the Contract Documents are available for review at Contractor's office. In the event of direct conflict between the prime contract and the provisions of the Agreement, the provisions of the Agreement shall control.

2.2 Subcontractor certifies and agrees that it is fully familiar with all of the terms, conditions and obligations of the Subcontract Documents, the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Subcontract based upon its investigation of all such matters and is in no way relying upon any opinions or representations of Contractor. It is further agreed that the Contract is incorporated into this Subcontract with the same force and effect as if it was set forth in full, and that Subcontractor and its subcontractors are bound by all terms of the Contract as they relate in any way, directly or indirectly, to the work covered by this Subcontract. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract. The Contract is defined above and includes but is not limited to the following documents:

A. **Final design dated 04-21-14, and prepared by Batis Development Co., Olsson Assoc., Certus A/E Group and BC Engineers, including but not limited to, Special Conditions, General Conditions, Specifications and Drawings approved by City of Omaha, NE.**

B. **Scope of work includes base bid.**

C. **Owner's Notice to Proceed date is 06/16/2014.**

2.3 **REFERENCES.** The description of the work to be performed or material to be furnished by Subcontractor by reference to a section or sections of the drawings, plans or specifications shall not be deemed to limit Subcontractor's obligation to the performance of only such work or the furnishing of only such material described in the section or section, if work or material that is within the general description of the section or sections is required by any other provision or section of the drawings, plans or specifications. Subcontractor shall furnish all materials and perform all work coming within the general description of the designated section or sections. Reference to such section or sections has been made solely for convenience in describing the obligation assumed by Subcontractor under this Agreement. Any dispute between Subcontractors over responsibility for divisions or categories of work shall be resolved by Contractor, whose decision shall be final.

3. Nothing in the Subcontract shall be construed to create a contractual relationship between persons or entities other than Contractor and Subcontractor.

4. **SUBCONTRACTOR INVESTIGATIONS.** Subcontractor hereby represents that it has thoroughly examined all drawings, plans and specifications and has examined the jobsite and ascertained for itself the conditions to be encountered. Subcontractor enters into the Agreement relying on its own information and investigation and not on statements or representations, if any, that may have been made by Contractor.

5. **PAYMENT SCHEDULE.**

5.1 **INSTALLMENTS.** Payments are to be made in monthly installments for work performed in the preceding month, ten days following receipt of payment from the Owner, provided the Subcontractor's invoice is received by the 20th of the preceding month in an amount equal to the value of the work completed and installed during the preceding calendar month as measured and certified by Owner's Representative, less the retention established under the prime contract and/or under the Specific Conditions. If Owner or its Representative has not so measured and certified, the Contractor's estimate as to the value of work by Subcontractor shall be binding on Subcontractor. Final payment, including retention, less any deductions permitted by the Agreement, shall be made upon completion of the work, acceptance thereof by Owner and expiration of the applicable lien period, or as soon thereafter as payment is received by Contractor from Owner. Receipt of payment by Contractor from Owner is a condition of payment to Subcontractor from Contractor. "The Contract Price shall be the full compensation due to subcontractor/supplier/vendor for the performance of all services and material set forth in this Agreement, and includes all the sales, use, consumer and other taxes mandated by applicable Legal Requirements."

5.1a **Schedule of Values – Within 5 days of Contractor's request, Subcontractor shall prepare and submit to Contractor a Schedule of Values which breaks down Subcontractor's work into individual activities. Each activity contained in the Schedule of Values shall be assigned a monetary price such that the total of all such items shall equal the Subcontract Price. The Schedule of Values shall be prepared in such detail as may be required by Owner and/or Contractor.**

5.1b **Payment and Verification – Subcontractor is required to pay for all labor, materials and equipment used in the performance of Subcontractor's work through the most current period applicable to progress payments received from Contractor. Contractor may require reasonable**



evidence to show that all obligations relating to Subcontractor's work are current through all payments received from Contractor before releasing any payment due for Subcontractor's work.

**5.1c Progress Payment Applications** – Subcontractor's applications for payment shall be itemized and in accordance with Subcontractor's Schedule of Values and any other substantiating data as required in the Contract for Contractor's payment applications. Subcontract payment applications may include amounts for Subcontract change orders which have been fully executed by Subcontractor and Contractor. Subcontractor cannot include in its payment applications any amounts for changes which have not been fully executed by Subcontractor and Contractor, or for disputed work.

**5.1d Lien Waivers** – Subcontractor shall provide, in a form satisfactory to Owner and Contractor, lien or claim waivers in the amount of the application for payment from Subcontractor, and its subcontractors, materialmen and suppliers for the completed work. Contractor may refuse to pay Subcontractor if Subcontractor fails to provide such waivers. If such waivers are conditional upon payment, Contractor may choose to make payment by issuance of joint checks to Subcontractor and its subcontractors, materialmen and suppliers. Subcontractor shall not be required to sign an unconditional waiver of lien or claim prior to receiving payment, or in an amount in excess of what it has been paid.

**5.1e Application Reduction, Rejection or Nullification** – Contractor may reduce or reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage based upon:

- (a) Subcontractor's failure to perform its work as required by the Subcontract Documents;
- (b) Loss or damage to Owner, Contractor or others to whom Contractor may be liable arising out of or relating to the Subcontract and caused by Subcontractor or its lower tier subcontractors or suppliers;
- (c) Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with its work;
- (d) Rejected, nonconforming or defective work which has not been corrected;
- (e) Reasonable evidence of delay in performance of Subcontractor's work such that the work will not be completed within the time allotted by the updated progress schedule, and that the unpaid balance of the Subcontract Price is insufficient to offset the liquidated damages or actual damages that may be sustained by Contractor as a result of the anticipated delay caused by Subcontractor;
- (f) Reasonable evidence demonstrating that the unpaid balance of the Subcontract Price is insufficient to cover the cost to complete Subcontractor's work;
- (g) Third party claims against Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed. Subcontractor can eliminate this basis by furnishing Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which is sufficient to discharge such claims if established;
- (h) Owner's reduction, rejection or nullification of any part of a payment application; or
- (i) Any other failure to comply with the terms and conditions of the Subcontract Documents.

Contractor shall give written notice to Subcontractor, at the time of reducing, disapproving or nullifying an application for payment, of the specific reasons for Contractor's action. When the above reasons for reducing, disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

**5.1f Retention** – Contractor may withhold from Subcontractor retention up to a rate of 10 percent, or as provided by law.

**5.1g Payment Not Acceptance** – Payment to Subcontractor does not constitute or imply acceptance of any portion of Subcontractor's work.

**5.1h Final Payment Application** – Contractor is required to incorporate Subcontractor's application for final payment into Contractor's next application for payment to the Owner only after the following occur:

- (a) acceptance of Subcontractor's work by Contractor and Owner;
- (b) if requested by Contractor, evidence acceptable to Contractor that all payrolls, bills for materials and equipment, and other indebtedness connected with Subcontractor's work have been fully paid, or will be fully paid by issuance of joint checks in return for unconditional releases;
- (c) if requested by Contractor, consent of Subcontractor's surety to final payment;
- (d) satisfaction of close-out procedures as may be required by the Subcontract Documents; and
- (e) if requested by Contractor, releases and waivers of liens, stop notices, bond rights, or any rights against Contractor, its surety or Owner, effective upon payment, to the extent and in such form as may be designated by Contractor.

**5.1i Effect of Final Payment** – Acceptance of final payment by Subcontractor shall constitute a waiver of claims by Subcontractor, except for claims reserved in a final release.





- 5.2 **FURNISHING OF RECORDS.** If and when required by Contractor, Subcontractor shall furnish payroll affidavits, payroll tax receipts, or any other payroll information or documents required in connection with a public works contract or contract requiring payment of "prevailing wages," receipts, vouchers and releases of claim, all in a form satisfactory to Contractor. It is agreed that no payment under the Agreement shall be made, except at Contractor's option, until and unless such documents have been furnished.
- 5.3 **OFFSETS.** All payments to Subcontractor are subject to offset for payments and withholdings made under the direct payment and withhold provisions of the Agreement.
6. **EFFECT OF PAYMENTS.** No payment made under the Agreement shall operate as an acceptance of any portion of Subcontractor's work or as an admission on Contractor's part that the Agreement, or any portion of it, has been complied with if the facts shall be otherwise. Further, no payment shall be considered to be an acceptance of improper or defective work or material.
7. **PAYMENTS IN TRUST.** All sums received by Subcontractor from Contractor under the Agreement are received by Subcontractor in trust for the express use or purpose of paying in full for all labor, material, tools, equipment and appliances, including sales and other taxes, furnished to, ordered for or used by Subcontractor in the performance of the Agreement. No title to any payment, or any part of a payment, shall vest in Subcontractor, or be used for any other purpose, until Subcontractor has first paid in full for all such items to all persons who have supplied labor, material, or other things used in the work under the Agreement. Subcontractor shall present to Contractor satisfactory evidence of any such payment on demand.
8. **AUTHORIZATION TO PAY SUPPLIERS AND SUB-SUBCONTRACTORS.** Contractor is authorized to make payment on accounts stated by suppliers and sub-subcontractors for materials supplied, work performed and equipment furnished in connection with the Agreement and toward the satisfaction of any other of Subcontractor's liabilities for which Owner or Contractor may be legally responsible, by checks executed jointly in favor of Subcontractor and such suppliers, sub-subcontractors and other claimants. Any such payments shall be applied to and shall offset any payments due or to become due to Subcontractor under the Agreement otherwise. Nothing in this paragraph shall obligate Contractor to make such payments nor shall this provision create any right in any person or entity not a party to the Agreement. Subcontractor shall advise in writing all sub-subcontractors of any tier and all materialmen or suppliers of the provisions of this section prior to directing or permitting materials to be delivered or work to be performed.
9. **UNION CONTRIBUTIONS.** Subcontractor shall be fully and exclusively responsible for and shall pay when due any and all applicable contributions, allowances or other payments or deductions, however termed, required by any union labor agreement now or hereafter in force. As a material part of the Agreement, Subcontractor agrees to advise Contractor within twenty-four (24) hours of receipt of any notice of default or arrearages received from any union trust fund or other union fiscal intermediary. In the event any such default or arrearages are incurred Subcontractor agrees that any payment from Contractor may be made directly to the creditor union trust fund or fiscal intermediary.
10. **WITHHOLDING OF PAYMENTS.** Contractor is authorized to withhold from any payments due or to become due under the Agreement a reasonable amount as determined by Contractor as may be necessary in Contractor's opinion to protect Contractor and Owner from loss for any reason arising out of Subcontractor's responsibilities or performance under the Agreement, including, but not limited to:
- 10.1 Defective or deficient work not remedied;
  - 10.2 The filing of a lawsuit, claim or arbitration proceeding, or reasonable evidence indicating a probable filing of any such proceeding;
  - 10.3 Failure of Subcontractor to make proper payments or certificates of payments for labor, materials, equipment or other items required by the Agreement, or a reasonable fear thereof;
  - 10.4 Reasonable doubt that the work to be performed by Subcontractor hereunder can be completed for the unpaid balance of the contract price;
  - 10.5 Damage to another subcontractor;
  - 10.6 Costs incurred by Contractor resulting from Subcontractor's failure to complete the Agreement in accordance with any progress schedule or otherwise comply with the terms hereof; or
  - 10.7 Unsatisfactory prosecution of the work required under the Agreement by Subcontractor. In the event funds are withheld because of the filing of a lawsuit, claim or arbitration proceeding or because of the reasonable expectation of such filing, Contractor may withhold sufficient funds as are necessary in Contractor's opinion to cover any potential loss or damage to Contractor or Owner, including attorneys' fees and other costs recoverable by Owner or Contractor under the provisions of the Agreement in the event of any such dispute. When these grounds no longer exist, payment shall be made for amounts withheld because of them. At Contractor's election, the terms of this paragraph shall control over any alternate remedy set forth in any other provision of the Agreement.
11. **INSURANCE.** Subcontractor agrees to procure and maintain, at its sole cost and expense, all insurance with limits equal to or greater than the limits of liability and scope of coverages, as required in the **Prime Contract**, as set forth below, provided, however, that all coverage obtained by Subcontractor shall be on an **occurrence basis** and *not claims-made policies*. Insurance certificates shall be issued on a standard ACORD form and must be received prior to commencement of work (**required certificate format attached**). Each insurance company's rating as shown in the latest Best's Key Rating Guide shall be no less than A- or as otherwise indicated. All insurance certificates will state that all coverages are in effect and shall not be cancelled or nonrenewed without thirty (30) days' prior written notice to the Certificate Holder. Batis Development Company reserves the right to request and receive for review certified copies of any and all insurance policies to which this contract is applicable prior to commencement of work.





If Subcontractor should subcontract any of this work to a third party. Subcontractor shall insure that such third party maintains insurance as required in this section and shall furnish evidence thereof to Batis Development Company, no later than **June 24, 2014**.

11.1 **SEVERABILITY OF INTEREST:** All Insurance carried shall provide that, except with respect to the coverage limits, insurance applies to each insured as though a separate policy were issued to each.

11.2 **WAIVER OF SUBROGATION:** All insurance policies carried shall include a waiver of any right of subrogation of the insurers there under against Batis Development Company, as allowed by law.

11.3 **ADDITIONAL INSURED:** All Insurance carried (except workers' compensation and employer's liability insurance) shall name Batis Development Company as additional insureds and shall include products and completed operations coverage for the additional insured (s) under the general liability and umbrella policies.

11.4 **PRIMARY INSURANCE:** All policies of insurance provided pursuant to this agreement shall be written on a primary and noncontributing basis.

11.5 **PER PROJECT AGGREGATE:** General Liability and Umbrella policies will be endorsed to include a per-project aggregate.

11.6 **NO LIMITATION OF LIABILITY:** The required coverage and or limits referred to and set forth shall in no way affect or limit the Subcontractor's liability with respect to its performance of this contract.

11.7 **HABITATIONAL COVERAGE:** If the scope of work so indicates, there will be **no habitational exclusions** included on the policies. This includes, but is not limited to, apartments, town homes, or condominiums.

11.8 **WORKERS' COMPENSATION INSURANCE:** Insurance sufficient to discharge its obligations under all applicable workers' compensation laws in the states that work is to be performed, including any of the federal or maritime laws.

11.9 **EMPLOYER'S LIABILITY INSURANCE:**

Insurance to be provided with minimum limits of:

Bodily Injury by Accident	\$	500,000	Each accident
Bodily Injury by Disease	\$	500,000	Policy limit
Bodily Injury by Disease	\$	500,000	Each employee

11.10 **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE:** Coverage to include contractual liability insurance for the indemnities set forth in this contract covering all owned, nonowned, and hired automobiles.

Combined Single Limit (each accident) \$ 1,000,000

11.11 **COMMERCIAL GENERAL LIABILITY INSURANCE:** Insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations; and advertising and personal injury liability. Completed operations to remain in force for at least two (2) years following project completion, or as noted below.

General Aggregate (per project)	\$	2,000,000
Products/Completed Operations	\$	2,000,000
Personal and Advertising Injury	\$	1,000,000
Each Occurrence	\$	1,000,000
Fire Damage	\$	50,000
Medical Expense	\$	5,000
Completed Operations		Years

**Must use ISO Form CG0001 or its equivalent with no amendments to the definition of an insured contract.**

11.12 **UMBRELLA OR EXCESS LIABILITY INSURANCE:** To be provided over the primary general liability, automobile liability, and employer's liability insurance policies.

Each Occurrence	\$	1,000,000
Aggregate (per project)	\$	1,000,000

12. **INDEMNITY.** Subcontractor shall indemnify and hold harmless Contractor and Owner and all of their employees, agents, representatives and assigns against any and all claims, demands, damages, loses, expenses, judgments and liability of every kind and nature, including attorneys' fees, arising out of or in any way related to Subcontractor's work and its performance or nonperformance under the Agreement including, without



limitation, Subcontractor's failure to properly certify or pay "prevailing wages," where appropriate, whether ascertained before or after termination of the Agreement. This indemnification above shall extend to all claims, demands and liability arising from the activities of sub-subcontractors and Subcontractor's suppliers arising out of or in any way related to the performance of work to be done under the Agreement. This indemnification agreement applies to all claims, demands and liability for injuries or damages occurring after completion of the project, as well as during the performance of the project. The indemnity shall apply regardless of any active and/or passive negligent act or omission of Owner or Contractor, as long as the injury or damage is alleged to be, or is, caused in part by the negligence or misconduct of Subcontractor or of its subcontractors, or any of their employees, agents, representatives, assigns or suppliers. This indemnification shall not apply to claims, demands and liability arising from the sole and exclusive negligence or willful misconduct of Contractor. All work covered by this Agreement done at the site of construction or in preparing or delivering materials to the site shall be done by the Subcontractor alone. Subcontractor shall indemnify and hold harmless from and against any and all claims, damages, losses, expenses, liabilities and judgments, well-founded or not, including reasonable attorney fees incurred by Contractor with respect thereto, arising out of Subcontractor's performance of this Agreement which may result in: (i) bodily injury; illness or death (contractor's employees or subcontractor's employees included) or property damage, including loss of use, caused in whole or in part by Subcontractor's negligent act or omission (active or passive) or that of a sub-subcontractor or of anyone employed by Subcontractor or his Sub-subcontractors or for those whose acts Subcontractor or a sub-subcontractor may be liable; (ii) claim or liability for Workers' Compensation. Subcontractor and sub-subcontractor shall have no rights of recovery or subrogation against the owner or contractor for property, liability and workers' compensation claims.

13. **BOND REQUIREMENTS.** On Contractor's written request, Subcontractor shall furnish a corporate surety bond written by a surety company authorized to write surety business in the State of Kansas to guarantee the faithful performance of this Subcontract and the payment for all work and materials furnished under the Agreement. The bond shall be in an amount reasonably required by Contractor. Contractor shall pay for the surety bond provided that the premium for it does not exceed the then-existing rate commonly charged by corporations conducting a surety business in the State of Kansas. Notwithstanding the foregoing, in the event the Contractor notifies Subcontractor before submission of Subcontractor's bid that a surety bond will be required, Subcontractor shall include the premium of such bond in the price quoted and shall pay for the bond itself. Contractor shall have the right to demand such surety bond at any time during the progress of the job, and in the event of Subcontractor's failure to furnish such a bond within ten (10) days after written demand by Contractor, Subcontractor shall be deemed to be materially in default of the Agreement.

14. **SUPERINTENDENT.** Subcontractor shall at all times have a competent superintendent or foreman on the jobsite who shall be authorized to receive instructions from Contractor and make such decisions as may be necessary to the prompt and efficient performance of the Agreement.

15. **LABOR MATTERS.** In the event that Subcontractor or any of its sub-subcontractors causes or is involved in any picketing, informational signage and/or banner campaign, any other economic action or labor trouble or dispute on the job or if they are listed by the administrative office of the appropriate health and welfare, pension, vacation, or apprenticeship funds as being delinquent in payment or payments to such fund or funds, regardless of the job in connection with which the alleged delinquency occurred, they will be deemed to be in default under the Agreement and may be ejected from the job.

16. **PROGRESS OF WORK.** Subcontractor shall keep itself fully informed as to the progress of the work under the prime contract, and as soon as the project requires work to be performed under the Agreement for its continued progress, Subcontractor shall promptly commence work. Subcontractor will prosecute the work diligently to completion and **shall conform to any progress schedule established by Contractor.** Subcontractor will cooperate and coordinate its work with Contractor and other subcontractors so that there will be no delay or interference with other work on the project. In the event Subcontractor fails to comply with any requirements of this paragraph, and Contractor incurs loss or damage of any nature or any liability for damages or liquidated damages, Subcontractor shall reimburse Contractor for the portion of the loss, damage or liability incurred by Contractor in connection therewith as may be attributable to Subcontractor's delay in performance. If Subcontractor contends that any act of Owner or Contractor or any other job condition or event has caused Subcontractor to experience delay in the prosecution of the work, then Subcontractor shall give written notice of the occurrence of such delay to Contractor immediately.

17. **LIABILITY FOR WORK IN PROGRESS.** Subcontractor shall be responsible for its own work, property and/or materials, including, but not limited to tools, equipment, scaffolding, job trailers, personal property, vehicles and the like and shall bear the risk of any loss or damage thereto. In

the event of any loss or damage, Subcontractor shall proceed promptly to make repairs or to replace all the damaged work, property and/or materials at its own expense as directed by Contractor. Subcontractor shall also protect adjacent property from injury arising out of its work.

18. **CHANGE ORDERS.**

18.1 **RIGHTS OF CONTRACTOR.** When Contractor so orders, Subcontractor, without nullifying the Agreement, shall make any and all changes in the work as set forth in Paragraph 2 or in the Agreement, within the general scope of their Agreement.

18.2 **MINOR CHANGES.** Subcontractor acknowledges that Owner may have the authority to order through Contractor minor changes in the work not involving an adjustment in the contract price or progress schedule and not inconsistent with the general scope of the Agreement. Such changes shall be effected by written order issued by Owner's Representative. All such changes shall be binding on owner, Contractor and Subcontractor. Subcontractor shall carry out such written orders promptly.





18.3 **LIMITATIONS ON SUBCONTRACTOR.** Subcontractor shall make no changes in the work required to be performed under the Agreement, nor shall Subcontractor perform any extra work, without the issuance of a written change order signed by Contractor. Contractor hereby expressly refuses to pay for extras of any kind unless first authorized in writing.

18.4 **ADJUSTMENTS TO CONTRACT PRICE.** No change order shall be authorized unless an estimated price for such work is quoted in writing by Subcontractor and a maximum price for such work is agreed to by Subcontractor at the time of authorization. Provided, however, Subcontractor may proceed with the extra work without a fixed price if authorized to do so by a "price to be determined later" change order signed by Contractor.

18.5 **NO WAIVER BY PAYMENT.** If for any reason Subcontractor is paid for extras not first authorized in writing or for change orders issued on a "price to be determined later" basis which were not authorized by the appropriate persons, such payments shall not constitute a waiver of the provision set forth in this Paragraph 18 as to any other change orders or payments and Subcontractor may not rely upon such payment as a basis for asserting a claim for any other extra work which does not conform to the change order requirements and procedures set forth herein.

18.6 **OTHER PROVISIONS.** Nothing contained in the Agreement shall be construed to modify contractor's right to eliminate any portion of the work found unnecessary for the completion of the work as a whole or to make such changes as may be required by Owner. Contractor's obligation to increase the amount to be paid to Subcontractor under this contract shall be limited to the amount Contractor receives from Owner for such work, less any amounts allowed to Contractor for Contractor's overhead, profit, bond premium and work performed by Contractor or others in connection therewith. Any deduction from the subcontract price shall be limited to the reduction made under the prime contract for eliminated or reduced work.

19. **SUBCONTRACTOR CLAIMS.** In the event Subcontractor claims that it is entitled to damages or to additional compensation, other than for extra work for which written authorization has been given before performance, or in the event that Subcontractor disputes any determination made by Owner or Owner's representative, Subcontractor shall within the time allowed by the prime contract, prepare its claims or contentions in writing for presentation by Contractor to Owner. Subcontractor shall be bound by Owner's decision on all such matters to the same extent that Contractor is bound, and Subcontractor shall have no right to receive payment from Contractor on any such claim or contention in any sum greater than that allowed and paid to Contractor by Owner.

20. **GUARANTY OF WORK.** Subcontractor warrants and guarantees its work to Owner and Contractor against all loss or damage arising from any defective or deficient materials, equipment or workmanship furnished under the Agreement. Subcontractor shall indemnify, defend and hold harmless Owner and Contractor against liability, loss or damage arising from Subcontractor's performance under the Agreement including consequential damage, which may occur prior to Contractor's release from liability therefore from Owner. This warranty and guaranty shall extend for a period of one (1) year after the date of the recording a notice of completion for the project (or the date of completion if no notice of completion has been recorded), or within such longer period of time as may be prescribed by law or by the terms of any applicable special guaranty required by the Contract Documents. On Contractor's notification, Subcontractor shall immediately, at its own expense, replace defective or deficient material and perform labor necessary to correct any defect or deficiency in the work. Subcontractor shall pay for all costs and expenses that may be incurred in correcting the defects or deficiencies under the warranty and guaranty. If Subcontractor fails to make the necessary repairs and replacement promptly, Owner or Contractor, at Subcontractor's expense, may furnish materials or labor that are necessary for this purpose, and their costs shall be payable by Subcontractor on demand. Owner's taking possession and acceptance of the project shall not constitute a waiver of any warranty or guaranty or of any defect or deficiency in regard to materials, equipment or workmanship.

21. **CLEANUP.** Subcontractor shall at all times keep the jobsite free from accumulations of waste, materials or rubbish. On completion of its work, Subcontractor shall promptly remove all rubbish, surplus materials, tools, scaffolding and equipment from the jobsite and the premises shall be left "broom clean" or its equivalent unless more exactly specified. In the event of dispute as to the responsibility for cleanup or removal of rubbish from the jobsite, Contractor may perform the work and charge the cost to the various subcontractors responsible for it in such ratio, as Contractor, in Contractor's sole discretion, shall determine to be just. This allocation shall be binding on Subcontractor.

22. **JOB SAFETY.** Subcontractor, its employees, representatives, subcontractors and their employees shall comply with all applicable federal, state, local, and any other legally required safety and health standards, orders, rules, regulations or other laws. Subcontractor shall bear full financial responsibility, as between the parties to the Agreement, for the compliance of all persons or entities mentioned in the previous sentence. If any of such persons or entities fail to comply, Contractor may give notice of default to Subcontractor within twenty-four (24) hours from the time Contractor issues Subcontractor a written notice of noncompliance or within the time of an abatement period specified by any government agency, whichever period is shorter. Subcontractor's failure to clear the default within twenty-four (24) hours after notice shall give Contractor the following options:

22.1 **PERFORMANCE BY CONTRACTOR.** Without terminating the Agreement or the obligation of Subcontractor, Contractor may perform such portion of the work or may furnish any material, equipment, or other item required, as Contractor in its sole discretion may deem necessary to avoid noncompliance with any applicable safety or health laws. The cost of materials, equipment or other items shall be deducted from the Subcontractor's price, and, in the event the cost of such work or materials or other items exceeds the balance, the excess shall be immediately due and owing from Subcontractor to Contractor.

22.2 **EJECTION FROM JOBSITE.** Without terminating the Agreement, Contractor may eject Subcontractor from the jobsite, and Contractor shall have the further option of (i) performing all or a portion of the work itself, or (ii) having the work performed in whole or in part by others. The foregoing right to eject Subcontractor shall not be construed to deny Contractor any other right or remedy that it may have under the Agreement, at law or in equity.





22.3 **LIABILITY.** Subcontractor shall be liable for all damages suffered by Contractor by reason of Subcontractor's default, and exercise of the option by Contractor to eject Subcontractor shall not release Subcontractor of such liability. It is further agreed that in view of the difficulty of making a precise determination of such damages reason of delay, a sum of lesser of (i) \$500.00 or 0.25% of the total contract price per calendar day for the first ten days, (ii) \$1000.00 or 0.5% of the total contract price per calendar day for the next ten days, and (iii) \$1500.00 or 0.75% of the total contract price per calendar day thereafter, will be charged the Contractor, not as a penalty but as liquidated damages, for each calendar day commencing with the failure of Contractor to complete any portion of the Work by the Date stipulated in the Progress schedules attached to the Contract, subject, however, to any extensions allowed pursuant to the General Conditions hereof and continuing thereafter until the date such portion of the work has been completed by Contractor. The assessing of liquidated damages pursuant to this section shall be made by the Owner and may be offset against amounts otherwise payable by the Owner to Contractor under this Contract. In lieu of assessing liquidated damages as herein provided, the Owner may, notwithstanding any previous notice given Contractor by the Owner under Section 22.2.

23. **PERMITS, TAXES, LICENSES AND FEES.**

23.1 **COMPLIANCE.** Subcontractor shall obtain and pay for all necessary permits, licenses, inspections and taxes, and all work shall conform in every particular with all applicable federal, state and local orders, rules, regulations, inspections or other laws whether or not specifically mentioned in the drawings, plans and specifications. Subcontractor recognized that work on the project must continue in a manner consistent with the progress schedule. Subcontractor shall advise Contractor in writing of any incident where any orders, rules, regulations, inspections or other laws may tend to interfere with the orderly progression of the work.

23.2 **PAYMENT.** Subcontractor shall pay all taxes, licenses and fees of every nature that may be imposed or charged by any governmental authority on labor, material, or other things used in the performance of the work or on the transaction between Contractor and Subcontractor. If Subcontractor fails to pay any tax, license, or fee required to be paid by the provisions of this paragraph, Contractor, at its option, may pay any such item, and Subcontractor shall repay the sum to Contractor on demand.

24. **GOVERNMENTAL REGULATIONS.** Subcontractor at its own expense shall comply with all federal, state, municipal and other laws, ordinances, rules, regulations, orders, codes, standards, notices, and requirements, including, without limitation, those relating to discrimination in employment, fair employment practices, or equal opportunity. Subcontractor shall be responsible for and assure compliance with all such matters by itself, its employees, agents, representatives, subcontractors and suppliers. Subcontractor shall directly receive, respond to, defend and be responsible for any citation, order, claim, charge or criminal or civil action arising by reason of the failure of Subcontractor or any of its employees, agents, representatives, subcontractors and suppliers to so comply, regardless of whether such noncompliance results from active or passive acts or omissions or whether such noncompliance is the sole or a contributory cause of any of those matters. Subcontractor shall indemnify, defend and hold harmless Contractor from and against any and all liability, loss (including loss of profits or prospective advantage occasioned by the suspension, cancellation or termination of any contract or Contractor's eligibility therefore), damage, costs, claims, awards, or judgments, fines, expenses (including litigation expenses), reasonable attorneys' fees, claims or liability for harm to persons or property, expenses incurred pursuant or related to any hearing or meeting, or any other similar costs which may be incurred by Contractor resulting from Subcontractor's failure to fulfill its obligations set forth in this paragraph. Further, in the event of any such failure, Contractor in its discretion may exercise all or any of its rights and remedies provided it is under the terms of the Agreement.

25. **INTERPRETATIONS OF DRAWINGS, PLANS AND SPECIFICATIONS.** It is understood that ambiguities and inconsistencies may arise in and between drawings, plans and specifications. In the event of any dispute concerning the interpretation of these items, Subcontractor shall perform its work and provide materials, supplies, tools, equipment and other necessary items in conformity with the decision of Owner's Representative. If the decision of the Owner's Representative should require extra work, materials, supplies, tools or equipment, compensation to Subcontractor shall be determined in accordance with the procedures set forth in the prime contract.

26. **ALTERNATIVE EQUIPMENT, MATERIAL OR METHOD.** Subcontractor shall not deviate from the requirements of the drawings, plans and specifications as to materials, supplies and equipment to be furnished of the method of performing the work unless prior written approval has been obtained from Owner or Owner's Representative. Subcontractor warrants that any alternative equipment, material, supplies, equipment or method proposed by Subcontractor will achieve all performance standards established by the Contract Documents and will perform to Owner's satisfaction.

27. **ITEMS TO BE SUPPLIED BY SUBCONTRACTOR.** Subcontractor shall furnish all details, material lists or samples as called for in the specifications and shall deliver these items to Contractor within thirty (30) days from the date the last party to sign the agreement so signs. Shop drawings with a reasonable number of copies shall be submitted within the time so provided. The responsibility to supply these items and any supportive materials is the sole responsibility of Subcontractor. Subcontractor shall reimburse Contractor for any expenses or damages incurred by virtue of any delay in supplying any of these items.

28. **DEFAULT AND TERMINATION.** If Subcontractor fails to perform in accordance with terms of the Agreement, Contractor shall give notice of such default to Subcontractor specifying the nature of Subcontractor's default. If Subcontractor fails to cure the default within twenty-four (24) hours after the notice, Contractor, without terminating the Agreement or Subcontractor's obligation, may eject Subcontractor from the jobsite and perform the subcontract work itself or have it performed by others, and the cost of the work shall be deducted from the subcontract price. In the event the cost of such work exceeds the difference between the subcontract price and the amount paid Subcontractor, such excess shall be immediately due and owing from Subcontractor to Contractor. Subcontractor shall be liable because of its default for all damages suffered by Contractor and Owner, and Contractor's exercise of the option to eject Subcontractor shall not relieve Subcontractor of such liability. Subcontractor





shall have no right to receive any further payment after default until the work has been completed and Contractor's or Owner's damages, if any, ascertained.

29. **RELEASES/PROOF OF PAYMENT.** Before Contractor is required to make any payments under the Agreement, Subcontractor shall furnish to Contractor in a form satisfactory to Contractor, releases and proof showing all labor, materials, supplies, equipment, tools, union health, welfare, and pension fund payments, payroll taxes, and similar items for work or materials furnished under the Agreement have been paid in full.
30. **ATTORNEYS' FEES.** If either party becomes involved in arbitration or litigation arising out of the Agreement or the performance of it, the Court or tribunal in such arbitration or litigation, or in a separate suit, may award reasonable costs and expenses of arbitration and litigation, including expert witnesses' fees and attorneys' fees, to the party justly entitled to them. The parties agree that the party who recovers arbitration or litigation expenses shall recover the full amount of all such expenses and fees incurred in good faith. If Subcontractor breaches any term of the Agreement, Contractor may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Subcontractor, Subcontractor shall pay Contractor any attorneys' fees and expenses incurred by Contractor, whether or not legal action or arbitration is actually commenced against Subcontractor by reason of such breach.
31. **BANKRUPTCY.** If Subcontractor becomes bankrupt or makes an assignment for the benefit of creditors, or if a receiver is appointed, Subcontractor shall be deemed to be materially in default under the Agreement.
32. **OTHER CONTRACTS.** Should other contracts exist now or in the future between the parties to the Agreement, or with any affiliated corporation or entity of Contractor, concerning this or any other construction, then a breach by Subcontractor of any such contract may be considered a breach of all such contracts at the option of Contractor. In such event Contractor shall have all rights and remedies as to any or all such contracts as may be contained in this or any other contract or at law or in equity. In addition Contractor may withhold monies due or to become due on any of such contracts and apply any amount withheld toward the payment of any damages suffered on that or any other contract.
33. **NOTICES.** Any notice or demand pursuant to the Agreement must be in writing and may be served personally on the superintendent, foreman, or other person in charge of work for either party at the jobsite or may be served by certified mail or return receipt requested sent to the address of the party to be served as set forth in the Agreement.
34. **SUCCESSORS AND ASSIGNS.** Subcontractor shall not assign, sublet or transfer the Agreement, or any part of it, nor shall Subcontractor make any assignment or transfer of funds payable to Subcontractor under the Agreement, without Contractor's prior written consent, which may be granted or withheld by Contractor in its sole discretion. Except as so provided, the Agreement shall be binding on and inure to the benefit of the heirs, successors and assigns of the parties hereto.
35. **ENTIRE AGREEMENT.** The Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understanding, whether oral or written, of the parties and none shall be available to interpret or construe the Agreement. No supplement, modification or amendment of the Agreement shall be binding unless contained in a writing specifically referring to the Agreement and executed by all parties hereto.
36. **PARAGRAPH HEADINGS.** The paragraph headings used in the Agreement are for reference and convenience only and shall not in any way limit or amplify the terms or provisions hereof, nor enter into the interpretation of the Agreement.
37. **GOVERNING LAW.** The Agreement shall be governed and construed in accordance with the laws in the State of Kansas.
38. **TIME OF THE ESSENCE.** Time is of the essence for both parties, and they mutually agree to ensure the performance of their respective work and the work of their tier-subcontractors and suppliers so that the entire project may be completed in 100 days in accordance with the Contract and the updated progress schedule.
39. **WARRANTY OF AUTHORITY.** If Subcontractor is a partnership, corporation or other entity, the persons executing the Agreement on behalf of Subcontractor hereby covenant and warrant that (i) they have all the requisite power and authority to execute the Agreement and to obligate Subcontractor to perform its obligations hereunder; (ii) all steps have been taken prior to execution of the Agreement to qualify Subcontractor to do business in the State of Kansas; (iii) the Agreement has been properly executed by a duly authorized representative of Subcontractor; and (iv) the Agreement is a valid and binding obligation of Subcontractor.
40. **PARTIAL INVALIDITY.** Any provisions of the Agreement which shall prove to be invalid, void or illegal shall in no affect, impair or invalidate any other provision hereof; all such other provisions shall remain in full force and effect.
41. **PROTECTION OF THE WORK.** Subcontractor shall protect its work and be responsible in all circumstances for its good condition until final acceptance of the entire project. Subcontractor shall also protect adjacent property from injury arising from its work.
42. **ARBITRATION.** Any controversy arising from or related to the performance or interpretation of this Subcontract or any sub-contract is subject to arbitration. Owner, Contractor, Subcontractor, sub-subcontractors, material suppliers, and other parties concerned with the construction of the project are bound, each to the other, by this arbitration clause, as long as the party has signed this Agreement or any contract that incorporates this Agreement by reference, or any other agreement to be bound by this arbitration clause. If the contract between Owner and Contractor contains an arbitration provision, arbitration shall be held in accordance with that provision. On demand of the arbitrator or any party to an arbitration initiated under such provisions, Subcontractor and all parties bound by this provision agree to join in and become parties to and be bound by such arbitration proceedings. If the contract between the Owner and the Contractor contains no arbitration provision, disputes shall be resolved under the Construction Industry rules of the American Arbitration Association that are in effect at the time of the arbitration, except that AAA shall not administer the arbitration, and judgment may be entered on the award. If any party refuses or neglects to appear at or to participate in arbitration proceedings



after reasonable notice, the arbitrator may decide the controversy in accordance with whatever evidence is presented by the participating party or parties. The arbitrator shall award costs and reasonable attorneys' fees to the prevailing party or parties.

### SIGNATURE PAGE

#### Representation By Contractor

Neither Contractor nor Subcontractor have modified the printed language of the standard form agreement except by strike outs, interlineations or the like which have been initialed by both parties, or by attachments which are identified and attached. Any change to the printed language which was not initialed by both parties or set forth in an attachment shall have no force and effect on either party and both parties shall instead be bound by the unaltered printed language. This provision does not apply to the language which must be inserted into the blank spaces or to the blocks which must be checked. Those items need not be initialed by the parties.

#### Representation By Subcontractor

Subcontractor warrants that it is properly licensed by the State and/or County with the proper license classifications for performance of its work. Subcontractor further warrants that its license is and will remain current, active and in good standing all times during performance of its work.

The parties have executed this Subcontract for themselves, their heirs, executors, successors, administrators and assigns at the place and on the day and year first written above.

#### SUBCONTRACTOR

#### CONTRACTOR

Firm Corrado Construction

Firm Batis Development Company

By  MANAGER

By \_\_\_\_\_

Print Name/Title MICHAEL CORRADO

Name/Title,

Contractor's License # 34169

Federal I.D. # 77-0690153

State of Incorporation NEBRASKA

Partnership LLC

Proprietorship

## Exhibit A - Scope of Work

### Masonry

The masonry subcontractor will be responsible for, but not limited to, the following:

- All layout associated with this work
- Scaffolding as needed. A Certified Competent Person shall remain on the project at all times during scaffolding activities.
- Masonry mortar
- Masonry anchorage and reinforcements
- Thru-wall flashing ~~and mortar net~~ at base of masonry veneer walls (60 mil EPDM)
- ~~Transition flashing per detail 5, sheet A304.~~
- ~~Fluid applied waterproofing on CMU per detail 5 & 6, sheet A304~~
- Thru-wall flashing at manufactured stone veneer per detail 6, sheet A304
- ~~Color matched caulking of all control joints~~
- Weep holes
- Face brick
- CMU
- Manufactured stone veneer
- Manufactured stone caps
- Lintels ARE TO BE PROVIDED BY OTHERS.
- Rebar for trash enclosure walls ARE TO BE PROVIDED BY OTHERS. LABOR INCLUDED.
- Masonry cleaning
- Ensuring the safety of employees and those of other contractors on site during all masonry installation activities
- General site clean-up throughout construction
- Sales tax





## SUBCONTRACTOR SAFETY COMPLIANCE

As General Contractor, Batis Development Company is responsible for the coordination of the work of subcontractors on each of its jobsites. In addition, Batis Development has the ultimate responsibility for jobsite safety and as a result, expects compliance by all subcontractors with Federal, State, municipal and local safety regulations and with the Company Safety Program.

The Project Manager or Job Superintendent shall review the Company Safety Program with each subcontractor's supervising person and secure his/her signature on the company "Subcontractor Job Safety Compliance Statement". The original is to be retained in the subcontractor file.

All subcontractors are to be informed, BEFORE COMING TO THE JOBSITE, that their personnel will be required to have and to be wearing, approved Personal Protective Equipment (hard hats, boots, proper clothing) or they will not be allowed on the site. In addition, subcontractors will be expected to provide their employees all additional safety equipment and devices required by statutory regulations or unusual job conditions. Please note that NO TENNIS SHOES ARE ALLOWED ON ANY BATIS DEVELOPMENT PROJECT.

In addition to job safety training for its employees, subcontractors shall provide the following:

- A. First Aid kits in office and equipment trailers.
- B. Fire extinguishers in office and equipment trailers on the site and as part of any specific operation, such as welding, burning, cutting, etc., which require them in order to be in compliance with any Federal, State, Municipal or local ordinance or law.
- C. Drinking water in portable containers for the use of its employees.
- D. Safety devices required by OSHA or other Federal, State, Municipal or local regulatory agencies for use by its employees.
- E. Reports of all injuries to its employees on the jobsite to Batis Development Project Management, or be a representative of the subcontractor. (Copies of the weekly report of subcontractor-held safety meetings shall be given to Batis Development Project Management).
- F. Copies of Material Safety Data Sheets for all toxic and hazardous materials brought onto or used on the jobsite shall be given to Batis Development Project Management.
  1. HARD HATS must be worn at all times on all jobs
  2. GOGGLES or face shields are compulsory when drilling, burning, chipping, grinding, sawing, grouting, and when otherwise required by your foreman. WELDING HELMET is mandatory for all arc welders. RESPIRATORY EQUIPMENT, EAR PLUGS, LIFE JACKETS and LIFELINES shall be worn as required.
  3. GLOVES are to be worn when handling material with sharp edges and as directed by your foreman. FINGER RINGS and WRISTWATCHES are a constant hazard and all workers are encouraged to remove them while working.
  4. SHIRTS are to be worn by all personnel while on company time. No ties, loose or ragged clothing permitted.
  5. SHOES that support the ankle and guard against puncture and toe wounds must be worn at all times.
  6. CEMENT BURNS are a constant hazard in construction work, particularly in warmer weather. Be sure cement does not get inside your boots or gloves. Use protective hand cream on your hands and wrists. Wash off any cement or concrete that gets onto your skin, IMMEDIATELY. Report any burns, no matter how slight, to your foreman.
  7. Know where, FIRE EXTINGUISHERS, TELEPHONES and FIRST AID KITS are located and how to use them in emergencies.



8. Violation of any of the following items will subject you to automatic suspension subject to discharge:
  - a. Violation of OSHA Regulations.
  - b. Intoxication – coming to job premises or trying to work while under the influence or in possession of intoxicating liquors or narcotics.
  - c. Fighting or provoking a fight.
  - d. Horseplay in any form – scuffling, pranks, wrestling, throwing material and others, etc...
  - e. Removal and non-replacement of guardrails.
9. Learn the SAFE WAY to do your job before you start.
10. REPORT ALL ACCIDENTS, INJURIES and UNSAFE CONDITIONS to your foreman.
11. KEEP YOUR WORKPLACE CLEAN: Good housekeeping promotes safe and efficient work. Do not allow trash, scrap, or boards with protruding nails to lie in your work area. Keep walkways, exits, stairs and landing clear of debris.
12. Check all VEHICLES and EQUIPMENT before use to be sure that they are in proper operating condition.
13. HAND TOOLS, such as hammers, punchers, picks, chisels, shall be inspected for faulty handles or mushroomed heads prior to the start of each job and shall be re-inspected at weekly intervals throughout the term of the job.
14. CABLES, ROPES, SHEAVES, SHACKLES, BOOMS, LIFTING EQUIPMENT, etc... shall be checked each day. Worn or frayed items are to be replaced or repaired at once.
15. ALL ELECTRICAL EQUIPMENT must be grounded. Three-pronged plugs and receptacles are required on extension and equipment cords.
16. Use SAFETY GUARDS provided. THE SOURCE OF POWER must be disconnected whenever it is necessary to repair or adjust a piece of electrical equipment. It is not sufficient to merely turn off the operating button of the equipment. NOTE: Only authorized persons are to repair electrical equipment.
17. CRANES, DERRICKS, HOISTS, LIFTS are NEVER to be operated within 10' of electrical transmission lines.
18. GASOLINE may be handled or stored only in approved safety cans. ALL internal combustion engines must be shut off and cooled before fueling, oiling, cleaning, or adjusting. Check oil when refueling. Do not use gas for cleaning parts and tools.
19. OXYGEN and ACETYLENE EQUIPMENT can be extremely dangerous. Unless you are qualified and authorized to use this equipment, leave it alone. CYLINDERS shall be secured UPRIGHT at all times to keep oil away from oxygen fittings (with CAPS on when not in use). Watch out for nearby combustibles and keep bottles shielded or a safe distance from welding or cutting operations.
20. COMPRESSED AIR HOSES must NEVER be pointed at yourself or anyone else. Compressed air must be used for the prescribed operations only, with pressures kept as low as possible for doing the job adequately. Be sure that all hoses are connected properly and are secured.
21. RIDING – no more than three people may ride in the cab of a truck at one time. SEATBELTS provided must be worn. RIDING material hoists, crane loads, balls, hooks or excavation equipment is not permitted.
22. MATERIAL OR EQUIPMENT being transported by truck must be loaded, cinched and flagged in a manner consistent with good loading and transporting practice and the truck shall be driven only by authorized employees holding valid chauffeurs licenses of the proper class.
23. STAY OUT FROM UNDER and IN FRONT OF LOADS on cranes, etcetera. Do not cause or permit a load to be carried over a worker who is unaware of it or cannot get clear.
24. DO NOT ATTEMPT TO LIFT objects that are too heavy for you to lift alone; ask for help. Know how to lift using your legs. NOT YOUR BACK.
25. ALL LADDERS MUST BE INSPECTED prior to the start of each job and equipped with safety feet. Damaged ladders must NEVER be used.
26. LADDERS must be on a firm foundation, lashed or hooked to the structure and extend 36" above the landing.
27. NEVER CLIMB or descend a ladder with any thing in your hands or pockets; use a hand line for tools and equipment.

28. WOOD SCAFFOLDS must be of good sound lumber, not less than two planks wide, or not less than 2"x10" material adequately overlapped and supported. Wheels on METAL SCAFFOLDS must be provided with locks. GUARD RAILS and TOE BOARDS must be in place on ALL scaffolding more than 4' in height. NEVER REMOVE GUARD RAILS FROM SCAFFOLDING!!!!!!!!!!!!!!!
29. OPENINGS in the floor or ground must either be guarded by standard railings and toe boards or covered. Guardrails and toe boards must protect WALL openings. Barriers must guard EXCAVATIONS with warning lights at night.
30. TRENCHES more than 5' deep shall be shored, sloped, or a trench shield used and material stored at least two feet from the edge. Trenches more than 4' deep shall have ladders extending 3' above the trench, within 25' of workers in the trench.

**REMEMBER!!**

**WORK SAFELY AT ALL TIMES!**

**A SAFE WORKER IS A PRODUCTIVE WORKER!**



## SUBCONTRACTOR ACCIDENT PREVENTION AGREEMENT

The subcontractor agrees that the prevention of accidents to workmen engaged upon or in the vicinity of the work is its responsibility. The subcontractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to rules, regulations and orders which have been or shall be adopted or issued there under and with the safety standards established during the progress of the work by the Contractor. When so ordered, the Subcontractor shall stop any part of the work which the Contractor deems unsafe until corrective measures satisfactory to the Contractor have taken and the Subcontractor agrees that it shall not have nor make any claim for damages growing out of such stoppages. Should the Subcontractor neglect to take such corrective measures, the Contractor may do so at the cost and expense of the Subcontractor and may deduct the cost thereof from any payments due or to become due to the subcontractor. Failure on the part of the Contractor to stop unsafe practices shall in no way relieve the subcontractor of its responsibility therefore.

### COMPLIANCE STATEMENT

Subcontractor: CORRADO CONSTRUCTION

Project Supervisor: BEN HENDERSON

Project Name: FREDDY'S FROZEN CUSTARD

I understand and agree that employees under my supervision are required to comply with all Federal, State, Municipal or local safety regulations that may apply to this project and are to comply also with safety standards established by Batis Development Project Manager.

Failure to comply with any of the above may cause Batis Development Project Management to intervene at your expense.

Signature:   
(Subcontractor Supervisor)

Date: 7/21/14



## **JOBSITE SAFETY**

To: All Subcontractors

Jobsite safety is a priority on this project. All persons on this jobsite will conduct their work according to OSHA safety guidelines. Work boots and hard hats are required at all times. Any worker found in violation of this directive will receive a warning. A second violation by any individual will result in their immediate and permanent expulsion from this project. No exceptions will be made. Please emphasize this to all your employees prior to their dispatch.

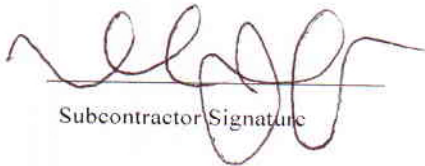
Respectfully Submitted,  
Batis Development  
Safety Manager



**SUBCONTRACTOR WARRANTY / GUARANTEE**  
**Project: Freddy's Frozen Custard & Steakburgers – FFC-020**  
**180<sup>th</sup> & Center – Omaha, NE**

We hereby guarantee that the MASONRY SCOPE, (material, equipment or labor) which we have installed has been done in accordance with the drawings and specifications and that the work as installed will fulfill the requirements included in the specifications. The under-signed agrees to repair or replace any or all of such work, together with any other adjacent work which may be displaced in connection with such replacement that may prove to be defective in workmanship or material with a period of ONE year(s) from the date of acceptance of the above-mentioned structure by the BATIS DEY. (owner) Ordinary wear and tear and unusual abuse excepted.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by the BATIS DEY. (owner) but not later than thirty days after being notified in writing by the BATIS DEY. (owner) the undersigned authorizes the BATIS DEY (owner) to proceed to have said defects repaired and made good at the expense of the undersigned, which will pay the costs and charges therefore upon demand.

  
Subcontractor Signature

\_\_\_\_\_  
Batis Development Company

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

CORRADO HOMES, LLC, a limited liability  
company, d/b/a Corrado Construction,

CASE NO. CI 18-3210

Plaintiff,

v.

BATIS DEVELOPMENT COMPANY,  
a corporation,

**ANSWER, AFFIRMATIVE  
DEFENSES, SETOFF AND  
COUNTERCLAIM**

Defendant.

Defendant, Batis Development Company (“Batis”), for its Answer, Affirmative Defenses, Setoff and Counterclaim against Plaintiff, Corrado Homes, LLC d/b/a Corrado Construction (“Corrado”), admits, denies, states or alleges as follows:

1. Admits the allegations in Paragraph 1 of the Complaint.
2. Admits the allegations in Paragraph 2 of the Complaint.
3. Admits the allegations in Paragraph 3 of the Complaint.
4. Denies the allegations in Paragraph 4 of the Complaint.
5. Denies the allegations in Paragraph 5 of the Complaint.

**COUNT 1—BREACH OF CONTRACT**

6. Incorporates by reference Paragraphs 1 through 5 above as if fully set forth herein.
7. Denies the allegations in Paragraph 7 of the Complaint.

**COUNT 2—NEBRASKA CONSTRUCTION PROMPT PAY ACT**

8. Incorporates by reference Paragraphs 1 through 7 above as if fully set forth herein.
9. Denies the allegations in Paragraph 9 of the Complaint.

**COUNT 3—QUANTUM MERUIT**

10. Incorporates by reference Paragraphs 1 through 9 above as if fully set forth herein.
11. Denies the allegations in Paragraph 11 of the Complaint.
12. Denies the allegations in Paragraph 12 of the Complaint.
13. Denies the allegations in Paragraph 13 of the Complaint.

14. Denies any and all remaining allegations contained in the Complaint, except for those allegations specifically admitted above, or those which constitute admissions against the interests of Plaintiff.

#### **AFFIRMATIVE DEFENSES**

By way of further answer, Defendant asserts the following affirmative defenses:

15. Plaintiff's claims are barred as a result of its own material breach of the agreement attached to the Complaint as Exhibit A (the "Subcontract").

16. Plaintiff's claims are barred by the doctrine of estoppel.

17. Plaintiff's claims are barred by the doctrine of laches.

18. Plaintiff's claims are barred by the doctrine of waiver.

19. Plaintiff's claims are barred by the doctrine of payment.

20. Plaintiff has failed to state a claim upon which relief can be granted.

21. Plaintiff has failed to mitigate its damages, if any.

#### **SETOFF AND COUNTERCLAIM**

By way of setoff and counterclaim, Batis states and alleges as follows:

22. Incorporates by reference Paragraphs 1 through 21 above as if fully set forth herein.

23. At all material and relevant times, Batis performed in accordance with the terms and conditions of the Subcontract.

24. Corrado materially breached the Subcontract by failing to prosecute and perform its work in accordance with all terms and conditions of the Subcontract.

25. Corrado's material breach of the Subcontract caused Batis to incur an additional \$14,720.55 to complete work that Corrado was obligated to perform under the Subcontract.

26. Under the terms of Paragraph 32 of the Subcontract, Batis was entitled to treat Corrado's breach of the Subcontract as a breach of all other contracts between the parties, and to apply any monies that would otherwise be due Corrado under the other contracts to offset the damages Batis sustained as a result of Corrado's breach of the Subcontract.

27. After applicable setoffs, there is still a balance due and owing from Corrado to Batis of \$5,237.20.



28. Corrado filed a Construction Lien against the property involved in the Subcontract in the amount of \$93,240.44, even though it had not fully performed the work required by the terms of the Subcontract.

29. The lien was filed in bad faith, and Batis made demand upon Corrado to amend the lien, which Corrado refused to do.

30. Batis thereafter incurred costs and attorneys' fees in discharging the lien.

31. Under the terms of Neb. Rev. Stat. § 52-157, Batis is entitled to recover the costs it incurred in discharging the lien.

WHEREFORE, Defendant Batis Development Company requests that this Court dismiss the Plaintiff's Complaint, with prejudice, enter judgment in favor of Defendant on its setoff and counterclaim, award Defendant damages in the amount of \$5,237.20, plus the costs and attorneys' fees it incurred in discharging the lien in an amount to be proven at trial, as well as the costs of this action, the attorneys' fees Defendant incurs in this action as allowed by applicable law, and for such other and further relief to which Defendant is entitled.

DATED: May 24, 2018.

BATIS DEVELOPMENT COMPANY,  
Defendant,

By 

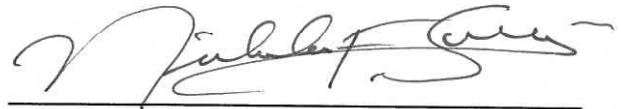
Thomas J. Culhane, #10859  
Nicholas F. Sullivan, #25351  
Erickson | Sederstrom, P.C.  
Regency Westpointe  
10330 Regency Parkway Drive, Suite 100  
Omaha, NE 68114  
Telephone: (402) 397-2200  
Facsimile: (402) 390-7137  
[culhane@eslaw.com](mailto:culhane@eslaw.com)  
[nsull@eslaw.com](mailto:nsull@eslaw.com)  
*Attorneys for Defendant*



## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing *Answer, Affirmative Defenses, Setoff, and Counterclaim* was electronically filed on May 24, 2018 using the Nebraska Supreme Court E-Filing System, and that a true and correct copy has been served on Plaintiff by electronic mail and by regular United States Mail, postage prepaid, to Plaintiff's counsel of record:

Ryan P. Watson  
Schirber & Wagner, LLP  
11515 South 39th Street, Suite 102  
Bellevue, Nebraska 68123  
[ryan@schirberandwagner.com](mailto:ryan@schirberandwagner.com)



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Nicholas F. Sullivan

# Certificate of Service

I hereby certify that on Thursday, May 24, 2018 I provided a true and correct copy of the Answer to the following:

Corrado Homes, LLC represented by Ryan Watson (Bar Number: 25597) service method: Electronic Service to ryan@schirberandwagner.com

Batis Development Company service method: No Service

Signature: /s/ Nicholas Sullivan (Bar Number: 25351)

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

CORRADO HOMES, LLC d/b/a  
CORRADO CONSTRUCTION,  
a Nebraska Limited Liability Company,

Plaintiff,

v.

BATIS DEVELOPMENT COMPANY,  
a Kansas Corporation,

Defendant.

CASE NO. CI 18-3210

ANSWER

COMES NOW, Plaintiff, Corrado Homes, Inc, a Nebraska Limited Liability Company ("Corrado"), by and through counsel of record, Ryan P. Watson of Schirber and Wagner, LLP, and for its Answer to Defendant's setoff and counterclaim states and alleges as follows:

1. Plaintiff generally denies the allegations in paragraphs 22 through 31 of Defendant's Answer, Affirmative Defenses, Setoff, and Counterclaim.

WHEREFORE, Plaintiff prays this court dismiss Defendant's setoff and counterclaim, award fees and costs as allowed by law, and any further relief deemed just and equitable.

CORRADO HOMES, LLC, Plaintiff



Ryan P. Watson, #25597  
SCHIRBER & WAGNER, LLP  
11515 S. 39<sup>th</sup> Street, Suite 102  
Bellevue, Nebraska 68123  
[ryan@schirberandwagner.com](mailto:ryan@schirberandwagner.com)  
(402)592-2800  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

Pursuant to Neb. Ct. R. Pldg. § 6-1105(b), the undersigned certifies that on Tuesday, January 1, 2019, this document was e-filed via Nebraska.gov and served as indicated therein, unless otherwise noted below:

Nicholas F. Sullivan, #25351  
Erickson Sederstrom, P.C.  
10330 Regency Parkway Dr., Ste 100  
Omaha, NE 68114  
[nsull@eslaw.com](mailto:nsull@eslaw.com)



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SCHIRBER & WAGNER, LLP

# Certificate of Service

I hereby certify that on Wednesday, January 02, 2019 I provided a true and correct copy of the Answer to the following:

Batis Development Company represented by Culhane,Thomas,J (Bar Number: 10859)  
service method: Electronic Service to culhane@eslaw.com

Batis Development Company represented by Nicholas Sullivan (Bar Number: 25351)  
service method: Electronic Service to nsull@eslaw.com

Signature: /s/ Ryan Watson (Bar Number: 25597)