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SUBCONTRACTOR AGREEMENT

Primary Insurance Required

Builder Name: _____ Builder Address: _____
("Builder") _____

Subcontractor _____ Subcontractor _____
Name: _____ Address: _____
("Subcontractor") _____

Property _____
Address: _____
("Property") _____

Scope of Work – Describe the Work and reference other documents, as appropriate, such as plans and specifications ("Work"): _____

Contract Price (includes all taxes and fees) ("Contract Price"): _____

Completion Date: _____

Terms and Conditions

1. Acceptance. Subcontractor's acceptance of this Subcontractor Agreement ("Agreement") is expressly limited to the terms of this Agreement and any additional or different terms suggested by Subcontractor are rejected unless expressly consented to in writing by Builder. Upon acceptance by Subcontractor, this Agreement shall constitute a valid and binding contract which shall be governed, construed and subject to the laws of State where the Property is located.

2. Parties Relationship. Subcontractor, an independent contractor, shall provide all labor, materials, equipment, supplies, accessories, transportation, and services necessary for the completion of all Work described by this Agreement. This Agreement shall be interpreted so as to require Subcontractor to comply with each and every requirement contained or referred to in this Agreement. In the event of a conflict between this Agreement and any other document referenced herein, the terms and conditions of this Agreement shall govern.

3. Performance Standards. Subcontractor warrants that all Work shall: (a) meet all requirements of this Agreement; (b) be furnished by experienced personnel in accordance with Subcontractor's best skill and attention and the highest professional standards and without delay to other tradesmen; and (c) be completed (including final clean up) within thirty (30) days of the date of the latest signature hereto unless another time for completion is expressly set forth in this Agreement.

In addition, all materials, equipment, supplies, and accessories furnished by Subcontractor in connection with this Agreement shall be of good quality and workmanship in strict compliance with the requirements of this Agreement, and free from defects, latent or patent, for a period of not less than one (1) year for workmanship and two (2) years for systems, or such longer period as required by the laws of the State where the Property is located. Subcontractor will promptly notify Builder in writing (before commencing the Work) if there are any defects or deficiencies in the surface that is to receive Subcontractor's Work.

Subcontractor agrees, without charge to Builder, to diligently commence within seventy-two (72) hours of Builder's written request, the repair or replacement of any and all failures of Subcontractor to conform to the requirements of this Agreement. If Subcontractor does not commence and diligently pursue such repair or replacement within the period specified, Builder shall have the right to remedy such failure, and upon Builder's demand, Subcontractor shall pay Builder all costs incurred by Builder in connection with Subcontractor's failure, including without limitation, all reasonable costs, professional, administrative, managerial, and attorneys' fees.

4. Compensation. Builder shall pay Subcontractor the Contract Price stated on the first page of this Agreement upon substantial completion of the Work, subject to retention in the amount of five percent (5%) which shall be payable upon final completion, provided Subcontractor has provided all maintenance information related to Subcontractor's Work. Notwithstanding the foregoing, Subcontractor agrees that if Subcontractor fails to satisfy the requirements of this Agreement, including without limitation obtaining the insurance coverage required herein, all Work performed shall be at Subcontractor's own expense and risk, without right of recovery against the Builder. Such remedies shall be in addition to any other rights or remedies Builder may have at law or in equity.

5. Taxes. Subcontractor shall pay all Federal, State and Municipal payroll, excise and sales taxes, and any and all other levies and taxes imposed in respect of any materials and services provided. The Contract Price includes all such taxes and all fees applicable to goods or services furnished by Subcontractor and/or materials used in the production thereof.

6. Indemnity. A "Construction Defect Claim" is, among other things, a claim related to an alleged deficiency or defect in the development, planning, design, supervision, observation of construction or construction of an improvement to real property. The work performed by Subcontractor shall be at the risk of the Subcontractor and its employees and agents exclusively. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless, including costs to defend, Builder, owner of the Property, Builder's officers, directors, agents, successors and assigns (hereinafter "Indemnified Parties"), from and against liability for Construction Defect Claims to the extent the claims arise out of, pertain to, or relate to the Subcontractor's scope of work due to the fault of the Subcontractor. Subcontractor's indemnification and defense obligations hereunder shall extend to Construction Defect Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified herein are fully and finally barred by applicable Laws.

Further, in consideration of this Agreement, and to the fullest extent permitted by law, Subcontractor shall fully defend, and shall indemnify and hold harmless (at Subcontractor's sole expense) the Indemnified Parties, from and against all claims for damages involving personal injury, wrongful death, property damage, or economic damage (including but not limited to investigative and repair costs, attorneys' fees, consultant fees and all costs) arising out of or resulting from or in any way connected to the Work covered by this Agreement, or the acts or omissions of the Subcontractor, its employees, agents, servants, subcontractors, regardless of whether or not such claimed liability may be caused in part or concurrently by an Indemnified Party hereunder, and excluding only liability created by the sole and exclusive negligence of the Indemnified Parties. Subcontractor's defense and indemnification obligations shall survive termination of this Agreement.

This indemnity agreement is intended to provide indemnification and defense to the Indemnified Parties any time the work of the Subcontractor causes or contributes or is alleged to have caused or contributed to an incident which results in loss, injury or damages to another even when the negligence of the Indemnified Parties causes or contributes or is alleged to have caused or contributed in whole or in part to the incident causing the loss, injury or damages claimed. However, the Subcontractor shall not be required to indemnify or hold harmless the Indemnified Parties for any damages or injuries which arise from the gross negligence or willful misconduct of the Indemnified Parties, or for any defects in design furnished by the Indemnified Parties. Nothing contained herein shall preclude the Builder from obtaining equitable contribution from the Subcontractor.

Finally, Subcontractor agrees to defend each Indemnified Party against any Construction Defect Claim, or portion thereof, related to or arising out of Work by or for Subcontractor or Subcontractor's failure to comply with the terms of the Construction Agreement (and any addenda and exhibits thereto), including, without limitation, all costs and expenses related to such defense (including, without limitation, attorneys' fees, court costs and all other professional, expert or consultants' fees and costs). Owner, Contractor and Subcontractor intend that the obligation of Subcontractor to defend the Indemnified Parties shall comply in all respects with State and Federal regulations. The obligation of Subcontractor to defend the Indemnified Parties related to any Construction Defect Claim shall be effective immediately after such claim is tendered to Subcontractor by the Indemnified Parties regardless of whether Subcontractor is a party to the claim. Within ninety (90) days, Subcontractor must provide written notice to the Indemnified Parties that it will satisfy its defense obligation under this Section.

7. Insurance. The Subcontractor shall obtain, before commencement, and shall maintain until final acceptance of the Work, such insurance as specified in this section entitled Insurance as will protect the Subcontractor and the Indemnified Parties for claims arising out of or resulting from Subcontractor's Work or operations under this Agreement, whether such operations are performed by Subcontractor or by anyone directly or indirectly employed by Subcontractor, or by anyone for whose acts Subcontractor may be liable. **THE SUBCONTRACTOR SHALL PROCURE AND MAINTAIN ALL SUCH INSURANCE ON A PRIMARY, NON-CONTRIBUTORY BASIS.** With respect to each of the insurance coverages specified hereunder, the Builder's insurance shall be excess to Subcontractor's insurance.

If offered in the insurance market where the Work is to be performed, all of the coverages specified in this section entitled Insurance shall name the Builder and, upon request, any other Indemnified Parties as additional insureds. Such coverage shall be evidenced by Additional Insured Endorsement Form B (ISO CG 20 10 10 93) or an equivalent form which extends additional insured coverage to the Builder for liabilities arising out of Subcontractor's Work. Also,

if offered in the insurance market where the Work is to be performed, the Subcontractor's general liability insurance shall include Products-Completed Operations coverage (as provided in ISO CG 20 37 07 04, or an equivalent) for the Work performed hereunder with the same limits of liability as required for commercial general liability coverage. In addition, all of the Subcontractor's insurance coverage(s) provided pursuant to this Agreement must provide coverage for multi-family dwellings and structures that have at least twelve (12) units per building or structure, as well as insurance coverage for tract housing developments.

Not less than five (5) days prior to commencement of the Work and until final acceptance of the Work, Subcontractor shall provide Builder with a certificate of insurance evidencing all such coverage. The Subcontractor's failure to obtain any of the coverages specified in this paragraph shall not negate or abridge Subcontractor's obligation to procure insurance for its contractual liability to the Builder.

In no case shall the Subcontractor procure and maintain less than the following insurance coverages, with an insurance carrier rated "A-" or better by A.M. Best and authorized to do business in the jurisdiction where the Property is located:

- a. Comprehensive Commercial General Liability including Contractor's Protective Liability, and Contractual Liability insurance with minimum limits of \$1,000,000 each occurrence, \$2,000,000 aggregate with either per project or per location endorsement for property damage and bodily injury;
- b. Comprehensive Automobile Liability insurance with minimum limits of \$1,000,000 combined single limit each accident, including bodily injury and property damage liability;
- c. Workers' Compensation and disability benefit insurance including Occupational Disease in the minimum amounts as required by the jurisdiction where the Work is performed;
- d. Employer's Liability insurance covering Subcontractor's employees directly or indirectly engaged in the performance of this Agreement with minimum limits of \$1,000,000 ; and
- e. Professional Liability insurance covering each consultant or independent contractor providing professional services to Subcontractor, with minimum limits of \$1,000,000 each claim.
- f. Builder's Option: At the Builder's request Subcontractor shall furnish separate payment and performance bonds in amount and form with a corporate surety thereon satisfactory to Builder, and made payable to Builder. The premium for such bond shall be borne and paid by the Builder.

The Subcontractor shall provide Builder thirty (30) days written notice of a change or cancellation in coverage. In addition, all insurance policies shall state that the insurer will provide Builder thirty (30) days prior written notice of a change or cancellation in coverage. The insurance coverage required hereunder shall be of sufficient scope and duration to ensure coverage of the Subcontractor and Builder for liability related to any claims arising prior to expiration of the applicable statutes of limitation and/or repose related to Subcontractor's Work.

The Subcontractor and its insurer waive all rights of subrogation against the Builder, and any of its subcontractors, sub-subcontractors, agents and employees and any other Indemnified Parties, except with respect to Worker's Compensation and Employer's Liability Insurance. This waiver of subrogation applies to any and all damages or losses to the extent covered by any

insurance applicable to the Work. The Subcontractor, as appropriate, shall require of its subcontractors, and the insurers, agents, and employees of any of them, by appropriate agreements (written where legally required for validity), similar waivers in favor of the Builder as well as the Indemnified Parties enumerated herein.

8. Termination. Builder reserves the right to cancel, without cancellation or any other charge, all or any part of this Agreement, if Subcontractor fails to perform all or any part of this Agreement. Such right of cancellation shall not be deemed a waiver of any other right reserved to Builder in this Agreement, or by law for any delay or failure to deliver as specified. Further, Builder reserves the right to terminate this Agreement without cause at any time prior to its completion by notifying Subcontractor in writing of its intent to so terminate. Upon such termination, Builder shall pay Subcontractor, in full satisfaction and discharge of all obligations owed to Subcontractor for Work performed under this Agreement, all labor and expense incurred by Subcontractor in fulfilling this Agreement to the earlier of the date of receipt of such written notice, or three (3) days after Builder mails such notice. The parties agree that such amount shall also be deemed to fully compensate Subcontractor for any damages resulting from Builder's termination of this Agreement, including without limitation anticipated profits on Work not yet performed. However, Builder shall have no obligation to pay for Work that materially deviates from the terms of this Agreement, in kind or quality.

9. Liens. In consideration of this Agreement, and provided that this waiver and release shall not become effective until full payment of the Contract Price has been remitted and the remittance has been marked paid by the bank against which drawn, Subcontractor waives and releases any and all liens and claims, statutory or otherwise, which now exist or hereafter arise, because of any and all labor, materials, and equipment furnished by or through Subcontractor in connection with this Agreement. Subcontractor shall furnish, if requested by Builder, all other necessary lien waivers, affidavits, or other documents, in form satisfactory to Builder, required to enforce and maintain this waiver and release and/or to keep Property free from any and all liens or claims for liens arising out of labor, materials, or equipment furnished under this Agreement.

10. Warranty. The Subcontractor is hereby advised that, as part of the terms of the purchase agreement between Builder and Homeowner, Builder is providing Homeowner with a General Limited Warranty Agreement, which will extend through the applicable statute of limitations and/or statute of repose for the jurisdiction where the Property is situated and will be governed by that particular jurisdiction's laws and statutes. A critical component of the General Limited Warranty Agreement is that all claims disputes and controversies between Homeowner and Builder arising from or related to the subject home or to any defect in or to the subject home or the real property on which the subject home is situated, or the sale of the subject home by Builder, including but not limited to, any claim for breach of contract, negligent or intentional misrepresentation, shall be submitted to binding arbitration by and pursuant to the arbitration provision contained in the General Limited Warranty Booklet.

11. Arbitration. By executing this agreement Subcontractor agrees that it is bound to participate in any binding arbitration proceeding that Subcontractor is requested to participate in, as between Builder and Homeowner and arising out of the Subcontractor's Work described herein. This includes Subcontractor's agreement to so participate as a party to such arbitration if requested, or as a witness.

Further to the terms of the General Limited Warranty Booklet, the arbitration forum may be selected from among the following choices: American Arbitration Association or DeMars & Associates, Ltd. The rules governing the arbitration shall be the rules of such forum that are in effect at the time of the request for arbitration. Any party shall be entitled to recover reasonable

attorney's fees and costs incurred in enforcing this arbitration agreement and the parties to the arbitration shall equally split the fees charged by the arbitrator. The decision of the arbitrator(s) shall be binding and final with respect to the parties, and may be entered as a judgment in any State or Federal court of competent jurisdiction.

This arbitration agreement shall be deemed to be a self-executing arbitration agreement. Any disputes concerning the interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues, and defense based upon waiver, estoppel or laches, shall be decided by the arbitrator.

The parties expressly agree that this arbitration provision involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §§ 1-16, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any state or local law, ordinance or judicial rule shall be inconsistent with any provisions of the rules of the arbitral association under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

Notwithstanding anything contained in this Agreement, if a judicial proceeding in law or equity shall be commenced against the Builder, the Builder shall nevertheless be entitled to implead or otherwise bring a claim over and against the Subcontractor, and shall in any event be entitled to collect a settlement or judgment against the Subcontractor.

12. Assignment. Subcontractor shall not assign or transfer this Agreement, or any part of this Agreement, or any amount due and payable or to become due and payable hereunder, without the prior written consent of Builder, and any such assignment or transfer without such written consent shall be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, administrators, executors and legal representatives, provided that nothing contained in this paragraph shall be construed so as to authorize Subcontractor to make any assignment or transfer prohibited in this Agreement.

13. Compliance With Laws. Subcontractor agrees to (a) comply with all applicable federal, state, or local laws, ordinances, orders, regulations, and directives in any manner relating to goods and services supplied under this Agreement, including by way of illustration and not limitation, Magnuson Moss, Civil Rights, Equal Employment Opportunities, Non-Discrimination in Employment, Wages and Hours, Overtime Pay, Anti-Kickback, Withholding Taxes, Davis-Bacon, Buy American Acts, howsoever said laws, orders, and directives may be labeled or designated from time to time, (b) comply with all requirements regarding the maintenance, preservation, and inspection of records and reports pertaining thereto, and (c) require compliance with all the above by all suppliers and subcontractors with whom Subcontractor may contract for anything relating to any portion of the Work.

14. Safety. The Subcontractor shall take reasonable precautions to protect the safety of, and to prevent damage, injury or loss to persons and property which might be affected by the Subcontractor's Work. Subcontractor warrants that all labor, materials, and equipment shall be furnished in full compliance with the requirements of the Occupational Safety and Health Act of 1970, and any other applicable laws whatsoever including all standards and regulations thereunder, and Subcontractor agrees to and shall indemnify, defend, and save harmless Builder from and against all liability arising in connection with Subcontractor's violation of any laws, codes, standards, rules or regulations whatsoever. Subcontractor shall directly receive

and be responsible for all citations, assessments, fines, or penalties that may be incurred by reason of such violation.

15. Construction of Agreement. In the event that any part of this Agreement shall be declared void or unenforceable, such imperfection shall not affect the validity or enforceability of the remainder of this Agreement. The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be construed to, define, limit or extend the scope or intent of this Agreement. The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute a waiver of that party's right to enforce the same in the event of a continuing or subsequent default on the part of the other party.

16. Choice of Law. All claims or disputes under this contract shall be governed by the laws of the state or jurisdiction where the Property is situated.

Builder

Company
Name: _____

By: _____

Title: _____

Date: _____

Subcontractor

Company
Name: _____

By: _____

Title: _____

Date: _____