

ANNUAL SUBCONTRACTOR AGREEMENT

THIS AGREEMENT is made on _____, 200____, between <>, a Minnesota corporation (“Contractor”) and _____ (“Subcontractor”).

RECITALS

WHEREAS, Contractor and Subcontractor wish to engage in a business relationship for their mutual benefit;

WHEREAS, Contractor and Subcontractor wish to memorialize this business relationship with an agreement which will govern their present and future business dealings; and

WHEREAS, Contractor and Subcontractor intend that this Agreement will control and supersede any prior written or oral agreements or understandings.

NOW, THEREFORE, Contract and Subcontractor, in consideration of the following mutual promises and other good and valuable consideration, the receipt of which is hereby acknowledged, do agree as follows:

1. Scope of Work: The scope of Subcontractor’s Work shall be defined by written Work Order to this Agreement. Subcontractor agrees to commence Subcontractor’s Work as authorized by the written Work Order and to complete such Work within the time set out in the contract documents for the project (“Contract Documents”). Subcontractor’s Work shall include all labor and materials necessary or incidental to completing the Work in a manner which complies with this Agreement and the Contract Documents, meets the highest industry standards, meets product and material manufacturer’s requirements, and complies with applicable laws, regulations and ordinances (“Subcontractor’s Work” or “Work”).

2. Payment: Contractor shall pay Subcontractor upon satisfactory performance of Subcontractor’s Work as defined in the written Work Order. Payment is subject to receipt of Lien Waivers, Affidavits, Warranties and Guarantees required by the Contract Documents or Contractor.

3. Term: This Agreement shall be for a term of one (1) year and will automatically renew for successive, one (1) year periods unless terminated by the parties in accordance with this Agreement.

4. Liability Insurance: Subcontractor shall maintain general liability insurance coverage, in an amount not less than \$1,000,000.00 combined single limit per occurrence and a \$2,000,000.00 general aggregate, providing coverage for completed operations, products liability and contractual liability. The Subcontractor’s insurance carriers must be rated at least an Aminus by A.M. Best. Subcontractor’s general liability insurance policy shall also include automobile liability coverage with limits of not less

than \$1,000,000.00 for each accident.

Contractor shall be named as an additional insured on Subcontractor's policy and shall provide that Contractor shall receive at least thirty (30) days' written notice prior to cancellation, nonrenewal or alteration in the terms of the policy. Subcontractor shall provide to Contractor a Certificate of Liability Insurance evidencing such coverage and provide replacement Certificates as needed.

5. Indemnification: Subcontractor shall indemnify and hold Contractor and Contractor's customer harmless from any and all claims arising out of or relating to Subcontractor's Work or arising out of or relating to any act or omission of Subcontractor. Indemnification shall include all expenses, including, without limitation, attorney fees incurred by Contractor and Contractor's customer in the investigation or defense of a claim. Additionally, to the fullest extent allowed by law, Subcontractor agrees to purchase insurance providing for such indemnification.

6. Independent Contractor: Subcontractor is an independent contractor and not an employee of Contractor. Subcontractor represents and warrants to Contractor that:

a. Separate Business Office: Subcontractor maintains a separate office with its own equipment, materials and other facilities;

b. Federal Identification Number: Subcontractor's Federal Identification number is: .

c. Subcontractor Control: Subcontractor controls the means of performing the services or Work which it performs on behalf of Contractor, and is paid a specific amount of money for specific services or Work as described under this Agreement.

d. Expenses: Subcontractor is responsible for the payment of all expenses related to the services or Work that it performs on behalf of Contractor.

e. Completion of Work: Subcontractor is responsible for completing the Work or services under this Agreement in a professional and workmanlike manner. Subcontractor is responsible for completing the Work and will be liable for any failure to complete the Work, as hereinafter provided.

f. Compensation: The compensation for Subcontractor's Work or services is as described above, and is determined on a commission or per-job or competitive-bid basis and not on any other basis.

g. Profit or Loss: Subcontractor will realize a profit or loss under this Agreement with Contractor depending upon its performance;

h. Business Obligations: Subcontractor represents to Contractor that it has continuing or reoccurring business liabilities and obligations; and

- i. **Success of Business:** Subcontractor acknowledges that the success or failure of its business depends upon its relationship of business receipts to expenditures, and that it is in no way guaranteed continuing Work with Contractor.

7. **Change Orders:** Contractor and Subcontractor agree that Contractor shall not be liable for any amount greater than the amount proposed by the Contractor. In the event Subcontractor's scope of Work is decreased or increased, such change shall be evidenced by a written Change Order, and the increase or decrease shall be set out in the Change Order. Subcontractor agrees that it will not take direction or requests from Contractor's customers, will not agree to any additional Work, or incur any additional expenses requested by customer unless approved by Contractor through a signed Change Order. Contractor shall not be liable for any labor, materials, expenses, services or other items which Subcontractor provides or agrees to provide without Contractor's prior written consent. All Change Orders are to go through the Contractor first, or Contractor will not pay for changes.

Except with Contractor's prior, written consent, Subcontractor shall not enter into any separate or direct agreements with any customer of the Contractor during construction or within one year after closing by the customer and the Contractor, or payment in full by the customer to the Contractor, whichever is later.

8. **Warranties:** Subcontractor hereby represents and warrants that Subcontractor's Work shall meet the requirements of this Agreement and comply with all warranties imposed by law, rule or regulation upon Contractor and/or Subcontractor. Subcontractor shall timely repair or remedy any defects in workmanship and material upon notice by Contractor to Subcontractor. Subcontractor hereby warrants, without limitation, that all workmanship performed and materials supplied by Subcontractor shall be free from defects caused by faulty workmanship and defective materials for a period of one year from the warranty date. Subcontractor also warrants that, if applicable, all installation of plumbing, electrical, heating and cooling systems shall be free from defects for a period of two years from the warranty date. Subcontractor also warrants that, if applicable, all workmanship and materials shall be free from major construction defects, as that term is defined by Minn. Stat. Chapter 327A. This "warranty date" shall be the earlier of the date on which the Buyer takes occupancy of the property or the date on which the Buyer takes legal or equitable title to the property, whichever is first to occur. Subcontractor also warrants that all workmanship performed and materials supplied by Subcontractor shall comply with all applicable laws, regulations and ordinances, including, but not limited to, applicable building and energy codes. All warranties shall survive the termination of this Agreement and the closing on the sale of the new home. Subcontractor agrees to provide warranty Work free of charge to Contractor and on a timely basis.

9. **Default:** If Subcontractor breaches this Agreement, Contractor shall have the right, upon written notice to Subcontractor, to terminate this Agreement. Upon receipt of written notice, Subcontractor shall cease all further Work. Contractor shall have the right to hire other subcontractors and suppliers to complete the Work and no payment

shall be due to Subcontractor until the Work is completed. All costs associated with completing Subcontractor's Work shall be deducted from the amount due Subcontractor. Subcontract shall be liable to Contractor for all damages arising out of or relating to Subcontractor's breach of this Agreement.

10. Arbitration: Contractor and Subcontractor agree to resolve all disputes arising out of or relating to this Agreement, or relating to their business relationship, through binding arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association. The venue for Arbitration shall be in St. Cloud, Minnesota. A party shall commence Arbitration by making a written Demand for Arbitration and serving it upon the other party, filing the Demand for Arbitration with the American Arbitration Association and paying all required filing fees. The Arbitrator shall have the right to allocate <attorney's fees> the filing and other costs and disbursements in an equitable manner. <The parties shall each pay their own attorney's fees.>

11. Workers' Compensation/Unemployment Insurance: Subcontractor shall maintain in force, throughout the period of time it is performing any Work for Contractor, workers' compensation and unemployment insurance coverage in such amounts and upon such terms as is required by law. Subcontractor shall provide to Contractor a Certificate of Insurance evidencing the workers' compensation and unemployment insurance coverage.

12. Drug/Alcohol Use: Subcontractor will ensure that Subcontractor, its employees, sub-subcontractors and others within Subcontractor's control, who are present on the job sites will be free of alcohol and other mind-altering substances, including all controlled substances.

13. Safety Practices: Subcontractor will comply with standard safety practices and any OSHA requirements applicable to Subcontractor's Work. Any OSHA fines based upon Subcontractor's safety violations which are assessed against Contractor shall be offset against any amounts due Subcontractor.

14. Choice of Law: This Agreement shall be governed by and construed under the laws of the State of Minnesota, irrespective of the domicile of the parties, the state in which this Agreement was entered into, or other conflict of law principles. The parties further agree that in the event of dispute concerns on a construction project, the laws applicable to the project including, by way of example without limitation, Building Codes, Energy Codes and Warranty Laws, shall govern any dispute with respect to such project.

15. Binding Effect: This Agreement shall bind the parties hereto, their successive heirs, successors and assigns.

16. Non-Assignment: This Agreement may not be assigned by Subcontractor without the express written consent of Contractor.

17. Conflict in Documents: The terms of this Agreement shall control in the

event of any conflict between the terms of this Agreement and any other agreement or document.

18. Scope of Work. All job sites have a refuse container. It is EXPECTED that all Subcontractors leave the job swept clean and free of all garbage, including: pop cans and bottles, wrappers, and any materials needed to do individual's daily work onsite. In the event that a party leaves the job site dirty, or any of the above on the job, there will be a \$100.00 fine per occurrence assessed to Employee's Company. This Agreement is hereby a first warning.

19. Onsite Conduct. All onsite workers are hereby warned that any use of profanity is not acceptable to the Contractor. All onsite workers shall wear appropriate clothing with no obscene or distasteful symbols, words, or lettering. Contractor reserves the right to turn off any radios or music players with inappropriate music, or which Contractor believes are loud or obnoxious. All discussions with homeowners are to be friendly and to the point.

20. Notice. Any written notice which may be or is required to be given pursuant to the provisions of this Contract shall be deemed sufficient if delivered or sent by certified mail, postage prepaid, return receipt requested, to the addresses listed below:

GENERAL CONTRACTOR:

◇
◇
◇
Attn: ◇

SUBCONTRACTOR:

WITH A COPY TO:

David J. Meyers, Esq.
Rinke-Noonan
1015 West St. Germain St., Ste. 300
P.O. Box 1497 St. Cloud, MN 56302
Phone: (320) 656-3512
Fax No: (320) 656-3500
Email: dmeyers@rnoon.com

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date herein first appearing above.

CONTRACTOR:

SUBCONTRACTOR:

By _____
Its _____

By _____
Its _____

PERSONAL GUARANTY

The undersigned "Guarantor," in consideration of and in order to induce Contractor to enter into the foregoing Subcontractor Agreement, does/do each hereby jointly and severally unconditionally guarantee to Contractor its successors and assigns, the performance of all obligations expressed in the Subcontractor Agreement to be performed by Subcontractor, including payment for damages for any breach of the Agreement, and any liability of Subcontractor accruing under the terms of the Agreement. This Guaranty shall extend through the renewals, extensions or continuations of the Agreement, and shall extend through and survive the termination of the Agreement, and shall be binding upon Guarantor's successors and assigns. Guarantor agrees to pay all costs and expenses, including reasonable attorney' fees incurred by Contractor in connection with the protection, defense or enforcement of this Guaranty.