

EXHIBIT 1

MASTER SUBCONTRACT AGREEMENT

Vendor Identification No.: _____

Subcontractor License No.: 195475 & 196424

Full Name of Subcontractor ("Subcontractor"):

RenCo, LLC

DBA: RENCO Roofing

Trade Classification: Roofing

Address of Subcontractor:

11201 N 23rd Ave

Ste 200

Phoenix, AZ 85029

Contact Name and Phone Number of Subcontractor:

Brady Kumpula: 602.867.9386

Cell Phone For Subcontractor Contact: 602.350.5550

Email Address of Subcontractor Contact: eric@rencoroofing.com

Fax Number of Subcontractor: 602.867.9387

24 Hour Emergency Phone Number of Subcontractor:

602.842.2842

Subcontractor is a: please circle

(choose one: LLC/Corporation/Partnership/Sole Proprietor)

If LLC, Corporation or Partnership, state of incorporation/formation (please attach articles of incorporation or organization): State of Arizona

Full Name of Contractor ("Contractor"):

The Contractor for the applicable Project shall be determined in accordance with Paragraph 28 below.

Address of Contractor:

20830 North Tatum Boulevard

Suite 250

Phoenix, Arizona 85050

General Description of Subcontractor's Work:

Roofing

Subcontractor's Federal Tax I.D. No.: 01-0813574

() Proof of Subcontractor's general liability insurance attached

() Proof of Subcontractor's Worker's Compensation attached

() Proof of Subcontractor's auto insurance attached

() IRS W-9 Form for Subcontractor attached

Date of this Subcontract: June 24, 2016

Term of this Subcontract (the "Term")*:

Commencing: _____

Ending: _____

***If left blank, this Subcontract shall remain in effect until terminated as provided herein.**

Contractor Initials: _____ Subcontractor Initials: 

RENCO 000001

MASTER SUBCONTRACT AGREEMENT

This Master Subcontract Agreement (this "**Subcontract**") is between K. Hovnanian Great Western Building Company, LLC, an Arizona limited liability company and K. Hovnanian Building Company, LLC, an Arizona limited liability company (subject to the limitations on liability set forth in Paragraph 28 below) (together, "**Contractor**") and the subcontractor identified as "Subcontractor" above ("**Subcontractor**") to perform the Work (as defined below) in connection with each Project (as defined below) and for any other work which Subcontractor performs for Contractor.

In consideration of the mutual agreements contained herein, Contractor and Subcontractor agree as follows:

1. **Master Subcontract.** Contractor is in the business of acquiring land, manufacturing lots, developing real estate for residential use and constructing, marketing and selling homes thereon. It is anticipated that Contractor may, but is not by the execution of this Subcontract obligated to, use the services of Subcontractor at various times in the furtherance of one or more of these purposes. Contractor and Subcontractor enter into this Subcontract for the purpose of defining certain rights and obligations of each, which will remain constant throughout their continued relationship during the Term of this Subcontract. Each specific item of Work to be performed by Subcontractor will be defined by a separate document captioned "**Work Agreement**", in the form attached hereto as **Exhibit A – Form of Work Agreement**. Each Work Agreement shall incorporate the terms and provisions of this Subcontract, shall set out such information as may be necessary to define adequately the specific Project and work product required and shall include, without limitation, a detailed scope of services and a schedule indicating the dates for the starting, performance, completion and sequencing of the various stages of the Work. Such schedule may be revised if and as required by the conditions of the Work, subject to approval and in accordance with other terms of this Subcontract. Each Work Agreement is intended to constitute a stand-alone contract, except to the extent otherwise provided in this Subcontract. No Work not specifically set forth on a Work Agreement duly executed by both parties, will be authorized and Contractor is not contractually or otherwise bound by, or responsible for, any Work so performed. Notwithstanding the foregoing, if Subcontractor, prior to the execution of a Work Agreement, performs any Work, Subcontractor and all such Work will be subject to the terms of this Subcontract and to any subsequently executed Work Agreement or other Contract Document. For the purposes of this Subcontract, the term "**Project**" refers to the specific location where Work is to be performed as defined in a Work Agreement.

2. **Work.** The work to be performed hereunder: (a) shall include, and Subcontractor shall perform, all duties and services necessary or inherent to the type and trade classification described on the cover page of this Subcontract, the scope of which shall be more fully defined in the Work Agreement; and (b) shall include all work of such type and trade classification for the Project which is the subject of a Work Agreement, and is to be performed in strict compliance with this Subcontract and the Contract Documents (as defined in Paragraph 11 below) and all addenda, amendments and changes thereto, whether or not stipulated in the Contract Documents, and shall include all work ordinarily and usually performed, and the supply of all facilities ordinarily and usually provided as a part of the Work covered by this Subcontract or ordinarily and usually performed by a subcontractor doing work of such trade classification (the "**Work**"). Subcontractor, to the entire satisfaction and approval of Contractor (or its authorized representatives and/or assigns) and all governing agencies, agrees to furnish all labor, materials, supplies, machinery, ladders, scaffolding, tools, equipment and services as necessary or desirable to properly perform the Work in a sound, workmanlike and substantial manner. Subcontractor is employed by Contractor as an independent contractor to perform the Work. **Subcontractor represents and warrants that, to the extent required by "Law" (as defined in Paragraph 22, below) in connection with the performance of the Work, Subcontractor is duly licensed to perform the Work under the Laws of the State in which the applicable Project is located ("State") and that Subcontractor's license number is set forth on the cover page of this Subcontract.**

3. **Contract Sum.** In consideration of, and for the full and faithful performance of the Work described in any Work Agreement and the other obligations of Subcontractor thereunder and hereunder, Contractor agrees to pay Subcontractor a certain contract sum (the "**Contract Sum**"), in accordance with the payment schedules and pricing set forth in Paragraphs 4 and 5 and **Exhibit B - Pricing** attached hereto and made a part hereof, as such payment schedules and pricing terms may be modified for any applicable Project pursuant to a specific Work Agreement. Payment of the Contract Sum is subject to additions and deductions for approved "Changes in the Work" (as defined in Paragraph 17, below) approved in writing by the parties and subject to the other additions, deductions and backcharges permitted and described elsewhere in this Subcontract. Except as expressly described in Paragraph 17 below, the Contract Sum shall not, under any circumstances, be increased for any increases in labor rates, transportation charges, costs of materials or any other change in pricing or availability of labor or materials or other similar changes, and Subcontractor agrees that, as a material part of the consideration for this Subcontract and as a material inducement for Contractor's execution hereof, the Contract Sum shall not be increased through the Term of this Subcontract, except as may be specifically provided in any Work Agreement. If, pursuant to a properly submitted Order (defined below) Contractor agrees to an increase in the Contract Sum on account of increases in costs of materials, such increase shall only apply with respect to such materials ordered after the effective date of the Order. Contractor shall obtain and pay for the general building permit, but Subcontractor shall obtain and pay for any required permits that are particular to its trade. Subcontractor agrees to pay promptly all fees, taxes, charges, damages, and penalties that may be assessed against Subcontractor or against Contractor on account of Subcontractor. Subcontractor agrees that all sales taxes, federal taxes, or any and all other taxes affecting the Work (including federal and State social

Contractor Initials: _____ Subcontractor Initials: 

security taxes and income taxes withheld from wages), and any or all sums paid, or to be paid, to union trust funds and cooperative committees have been included in the above Contract Sum and will be paid by Subcontractor. Further, as part of the Work and the Contract Sum, Subcontractor shall, among other things, (a) pay all transportation, storage and freight costs for labor, materials and equipment and (b) cause all temporary structures, scaffolds, lights, utilities, hoists, fuel, expendable supplies and other facilities of every type and description, required for the execution of the Work to be provided without additional charge to Contractor unless specified in **Exhibit B** or in the Work Agreement.

4. Progress Payments.

(a) Provided Subcontractor is not in default of this Subcontract, Contractor agrees to pay Subcontractor for all of the Work (less the "Retained Percentage", if applicable, described in Paragraph 5 below) which is completed in the manner required by this Subcontract in accordance with the payment method specified in **Exhibit B-1 – Payment Method** attached hereto and incorporated herein, provided that the given invoice or request for payment is "properly prepared" as set forth below. Unless otherwise prohibited by Law, any invoices or other requests for payment, in whatever form, received six (6) months or more after Work has been completed shall not be honored.

(b) In order for any invoice or other request for payment for Work as described in **Exhibit B-1** (all such invoices or requests for payment being referred to herein as an "invoice") to be "**properly prepared**", all of the applicable requirements set forth on **Exhibit B-1** must have been satisfied with respect to such invoice and all the following must be true with respect to such invoice:

(i) Subcontractor's insurance policies are in full force and effect in compliance with Paragraph 14 below.

(ii) The portion of the Work which is the subject of the invoice is satisfactorily complete and in conformity with the Contract Documents (defined below) in the opinion of Contractor's authorized representative at the time of receipt of the invoice. All material and workmanship furnished or performed by Subcontractor shall be further subject to final inspection, tests, and acceptance by or for Contractor upon completion of all Work and whether or not previously paid for by Contractor. At any and all proper times during the manufacture or performance of the Work, all materials and workmanship furnished or performed by Subcontractor shall be subject to inspection, tests, and approval by an inspector of Contractor, at any and all places where such manufacture or performance shall be carried on. Failure to make inspections or tests or to discover faulty workmanship or materials shall not prejudice the rights of Contractor on final inspection and tests. All expenses of tests and inspections to prove or establish the acceptability of performance of Work or material hereunder and any damage caused by such test shall, if the material or Work fails the test, be borne by Subcontractor.

(iii) The invoice must contain the identifying number of this Subcontract (and addendum number, if applicable) as set forth at the top of page 1 of this Subcontract and the identifying number of the applicable Work Agreement.

(iv) All prices contained in the invoice must agree in all respects with the applicable price schedule set forth in **Exhibit B** hereto, as the same may be modified pursuant to the applicable Work Agreement.

(v) The invoice must designate the name of the Project, subdivision and tract number and, for on-site Work, the lot, plan, elevation and/or building number, and all other identifying information applicable to the Work.

(vi) The invoice must show the gross amount billed, the amount of the Retained Percentage, if applicable, and the net amount billed.

(vii) Neither tax, freight nor other similar charges shall be added to the invoice. The parties recognize that the Contract Sum includes all such costs.

(viii) The invoice shall not demand any progress payment other than those permitted in **Exhibit B** or **Exhibit B-1** hereto.

(ix) Separate invoices must be utilized for (a) labor, materials, equipment and/or services for the Work and (b) such labor, materials, equipment, services or other work as is requested by Contractor in the manner set forth below but not part of the scope of Work described in the Work Agreement, including Changes in the Work.

(x) The invoice shall be accompanied by appropriate conditional lien releases from all persons or entities who might claim liens arising out of Subcontractor's performance of the Work to date (see Paragraph 7, below).

(c) Contractor shall have no obligation to pay Subcontractor for labor, materials, equipment or services or for any Changes in the Work unless the invoice for such Changes in the Work comply with subparagraph (b) above, other than clause (iv) thereof, and with the following additional requirements:

Contractor Initials: _____ Subcontractor Initials: 

(i) Any Changes in the Work which are estimated to cost less than \$2500 per residence shall be documented in a Field Purchase Order generated by Contractor's job superintendent or other representative of Contractor or, at the request of Contractor, on a change order or addendum to this Subcontract. It is Subcontractor's obligation to obtain an approved Field Purchase Order or change order or contract addendum on Contractor's form before proceeding with such Changes in the Work. When approved by Subcontractor and Contractor, the Field Purchase Order or change order or contract addendum shall be submitted by Subcontractor as the invoice for the applicable Changes in the Work reflected on such Field Purchase Order or contract addendum. Field Purchase Orders are not valid for any amounts equal to or exceeding \$2500 per residence.


(ii) Any Changes in the Work which are estimated to cost \$2500 or more per residence must be documented in a change order or addendum to this Subcontract signed by Contractor's office personnel (and not by the job site superintendent or any other on-site personnel) ("**Change Order**"), which must be approved by Contractor, which executed Change Order must be obtained by Subcontractor prior to its commencement of such Changes in the Work. In emergency situations only, Contractor's project superintendent may give a verbal Change Order number and request Subcontractor immediately start such emergency work. Subcontractor may proceed on that basis; however, it is Subcontractor's responsibility to secure an appropriate Change Order prior to invoicing the emergency Changes in the Work.

(d) Except where prohibited by Law, Contractor has the right to make any payment due to Subcontractor hereunder by joint check to Subcontractor and its sub-subcontractors, material suppliers or employees which have performed work or furnished materials at the Project without regard to whether or not lien releases have been submitted to Contractor.

(e) If a sub-subcontractor or material supplier of Subcontractor has performed in accordance with the provisions of its contract or agreement, Subcontractor shall pay the sub-subcontractor or material supplier, and shall require each sub-subcontractor to pay its sub-subcontractors and material suppliers, within seven (7) days of receipt by Subcontractor or sub-subcontractor of each progress payment or final payment, the full amount received for such sub-subcontractor's or material supplier's work and materials supplied based on work completed or materials supplied under its contract or agreement.

5. Final Payment; Payment of Retained Percentage. Contractor shall have the option of withholding a percentage specified on the applicable Work Agreement of any invoice for progress billings approved by Contractor under this Subcontract ("**Retained Percentage**"). If no Retained Percentage is so specified, then all references thereto in this Subcontract shall be inapplicable. In no event shall the final payment under any Work Order and, if applicable, the release of any Retained Percentage, be deemed "approved and certified" (as defined in Exhibit B-1) before the last of acceptance of Subcontractor's Work by Contractor, the applicable homeowners association or the applicable governmental authorities, including, without limitation, with respect to any Work constituting construction of a residence, the issuance of a certificate of occupancy or other evidence of a satisfactory final inspection for such residence by the applicable governmental jurisdiction. All final payments or payments of the Retained Percentage shall be subject to backcharges as provided in Paragraph 26 below. Even if the final payment or Retained Percentage is paid prior thereto, no payment made prior to final completion and acceptance of the Work shall be construed as evidence of final acceptance or acknowledgment of final completion of any of the Subcontractor's Work. Further, no payment to Subcontractor, including the final payment, or final inspection, notice of completion, or any governmental inspection shall be construed to be an acceptance by Contractor or waiver or release of any claims, demands, or causes of action of or for any known or unknown, latent or patent defect or unsatisfactory workmanship and/or materials. Payment of the Retained Percentage shall be contingent upon Contractor's receipt of (i) an AWP ("**Acknowledgement of Work Performed**") signed by the project superintendent or general superintendent, (ii) an appropriate retention invoice (see below) and (iii) such other documentation as may reasonably be required to evidence completion of the entire Work in conformity with the Contract Documents and the acceptance and approval of the Work by Contractor and all applicable governmental agencies. An appropriate retention invoice shall contain specific references to each regular invoice from which a payment was made with retention withheld and shall otherwise comply with the requirements described in Paragraph 4 and Exhibit B-1 hereof, as applicable.

6. Maximum Payments. Notwithstanding the provisions of Paragraphs 4 and 5 hereof, but excluding the payment of the Retained Percentage, which shall be governed by Paragraph 5 above, Contractor shall not be obligated to pay any amount to Subcontractor if such payment would render the balance in the Contract Sum then due to Subcontractor to be less than the sum of (i) the Retained Percentage plus (ii) the amount necessary for Subcontractor to complete or correct all of its then-remaining obligations for the Work. Contractor shall have no obligation to pay Subcontractor for labor, materials, equipment or services or for any Changes in the Work unless such Changes in the Work are expressly covered by a work order, Change Order or purchase order (collectively, an "**Order**") signed by an authorized representative of Contractor, which executed Order was obtained by Subcontractor prior to its commencement of such Changes in the Work.

Contractor Initials: _____ Subcontractor Initials: 

7. Payment Use Verification; Waiver of Claims.

(a) Lien Releases/Subcontractor's Affidavits. Subcontractor agrees, as a condition precedent to receiving any progress payments or the Retained Percentage, to provide, in a form satisfactory to Contractor, releases, waivers of lien, affidavits, and such further evidence as may be required by Contractor (from Subcontractor, its sub-subcontractors, materialmen, laborers and/or suppliers as applicable), in accordance with applicable Law, that all labor, materials, equipment and services used in connection with or incorporated in the Work or any Changes in the Work have been paid for in full. Such waivers and releases may be made conditional upon payment as appropriate. Contractor shall have the right, but not the obligation at all times to directly contact Subcontractor's employees, agents, sub-subcontractors and suppliers to ensure that such parties are being paid in a timely and complete manner by Subcontractor for labor or materials furnished for use in performing the Work. The satisfactory forms of lien releases and/or subcontractor's affidavits are attached hereto for reference purposes as Exhibits C-1 through C-4 – Lien Waivers, inclusive.

(b) Waiver of Claims. Subcontractor agrees that it shall waive all rights to make any demand for payments under this Subcontract and any particular Work Agreement or initiate legal proceedings to recover any such payment as of the first anniversary date of the date upon which such payment obligation of Contractor was first established pursuant to Paragraph 4(a) of this Subcontract; provided, however, that in the event Subcontractor provides notice or demand for such payments or initiates legal proceedings on or before such first anniversary date, Subcontractor shall be permitted to take steps in pursuit of recovery of such payments after said first anniversary date. Subcontractor specifically acknowledges and agrees that it waives any applicable statutes of limitation, with respect to payments under this Subcontract and any particular Work Agreement, which may authorize a legal proceeding of any form after said first anniversary date.

8. Liens; Payment Failures by Subcontractor. In the event Subcontractor fails to pay and discharge when due any bills for labor, materials, equipment, services or other obligations incurred by Subcontractor in the fulfillment of this Subcontract, or if at any time during the term of this Subcontract, Contractor shall have evidence of any lien or any claim against any Project or Contractor as a result of Subcontractor's operations, Contractor shall (a) be authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with attorneys' fees, expenses and court costs, shall be immediately due and payable to Contractor by Subcontractor and/or (b) have the right to deduct, retain, and backcharge pursuant to Paragraph 26 below, retain out of any payment, advance or guaranty of funds due or to become due to Subcontractor an amount sufficient to pay the direct expenses Contractor reasonably expects to incur to remove or correct the conditions caused by the lien or claim.

9. Materials and Work Furnished by Others. In the event the Work includes installation of materials or equipment furnished by others or Work to be performed in areas to be constructed or prepared by others, it shall be the absolute duty of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and to handle, store and install the items with such skill and care as to insure the satisfactory completion and good and workmanlike construction of the Work. It shall also be the absolute duty of Subcontractor to examine such work or areas prepared by others which is where Subcontractor's Work is to be performed, and to notify Contractor immediately in writing, and prior to commencing any Work affected by the deficiencies, of any deficiencies in the work or areas prepared by others which may adversely affect Subcontractor's Work. Use of such items or commencement of the Work by Subcontractor in such areas shall be deemed to constitute acceptance thereof, and responsibility therefore, by Subcontractor. Loss or damage due to acts of Subcontractor may be backcharged pursuant to Paragraph 26 below.

10. Claim Indemnification. Without limiting the generality of Paragraph 15 of this Subcontract, and provided that this Paragraph 10 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and the public policy of the State, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Subcontract, Subcontractor agrees to at all times indemnify, defend (with legal counsel selected by Contractor in its sole and absolute discretion) and hold harmless the "Indemnified Parties" (as defined in Paragraph 15), and each of them, from and against any and all "Claims" (as defined in Paragraph 15), liabilities and liens caused by labor performed or materials used or furnished to be used in connection with the Work, including, without limitation, "Defense Expenses" (as defined in Paragraph 15), and all damages, including, without limitation, any incidental damages, consequential damages and lost profits resulting to Contractor from such Claims, liabilities or liens. Further, in case suit on such Claim, liability or lien is brought, Subcontractor agrees within ten (10) days after written demand to cause the effect of any suit or lien to be removed from the Project, and in the event Subcontractor shall fail to do so, Contractor may enforce any of the remedies set forth in Paragraph 8 or otherwise in this Subcontract against Subcontractor. Subcontractor may litigate any such lien or suit, provided Subcontractor causes the effect thereof to be removed, promptly in advance, from the Project.

11. Examination of Documents; Representations.

(a) Subcontractor agrees that, prior to its execution of this Subcontract, it has reviewed and examined and understands this Subcontract. Subcontractor further agrees that, prior to its execution of any Work Agreement, it shall also have (i) reviewed and examined, and shall understand, its scope of work described in the Work Agreement, and all of the construction plans, drawings, models, specifications, measurements, submittals of Subcontractor approved by Contractor

Contractor Initials: _____ Subcontractor Initials: 

pursuant to Paragraph 18(a) below, and addenda thereto relevant to the performance of the Work (collectively with this Subcontract and the applicable Work Agreement, the "**Contract Documents**"), (ii) examined, inspected and investigated the location and condition of the entire Project on which the Work is to be performed (the "**Project Site**"), (iii) understood the conditions under which the Work is to be performed and (iv) determined that the Contract Documents are sufficient to enable Subcontractor to reasonably determine the Contract Sum for completion of the Work. Subcontractor is entering into this Subcontract, and shall enter into each Work Agreement, on the basis of Subcontractor's own examination, inspection, review and investigation of the Contract Documents and the Project Site and is not relying, and shall not rely, on the opinion or representations of Contractor except those which have been expressly provided to Subcontractor in writing in this Subcontract and the applicable Work Agreement. Accordingly, no allowance in the form of any additional compensation including, without limitation, any adjustment to the Contract Sum, is to be made by reason of any error on the part of Subcontractor with respect to the Contract Documents or the Project Site

(b) Information provided by Contractor regarding a Project Site or Contract Documents is and shall be believed by Contractor to be reasonably correct. However, Contractor does not warrant either the completeness or the accuracy of such information, and Subcontractor understands and agrees that it is Subcontractor's sole responsibility to verify all such information independently, and to make such examination of the Contract Documents and of the Project Site as shall be necessary for Subcontractor to satisfy itself with respect to the conditions to be encountered during the performance of the Work. In the event Subcontractor at any time detects any design deficiency, any error in measurements or any other errors in the Contract Documents, or any condition which Subcontractor believes to be at variance with approved plans, Subcontractor shall have an absolute duty under this Subcontract to immediately provide written notice thereof to Contractor.

(c) Subcontractor acknowledges and agrees that it is critical to the construction of each Project for Subcontractor to perform its Work based upon the then-most-updated Contract Documents expressly approved in writing by Contractor. Without limiting the generality of Paragraph 15 of this Subcontract, and provided that this Paragraph 11(c) shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and the public policy of the State, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Subcontract, Subcontractor agrees to at all times indemnify, defend (with legal counsel selected by Contractor in its sole and absolute discretion) and hold harmless the Indemnified Parties, and each of them, from and against any and all Claims caused by Subcontractor's failure to perform its Work in accordance with the then-current Contract Documents.

(d) Subcontractor acknowledges and agrees that, prior to its execution of this Subcontract, it has received and understands the terms of the new home limited warranty or warranties, together with any separate volume(s) of warranty performance standards offered by Contractor to its home-buying customers (collectively, the "Limited Warranty") and that the labor, materials and/or services to be performed by Subcontractor pursuant to the Work shall be in accordance with, and sufficient and satisfactory to allow Contractor to fully comply with the Limited Warranty.

Subcontractor's Initials: *JS*

Subcontractor acknowledges and accepts that, among other things, the Limited Warranty: (i) extends its benefits to successor owners of the applicable home; and (ii) requires, to the extent permitted by Law and required therein, the use of arbitration as a means of dispute resolution in the event of disputes between Contractor and an applicable homeowner and further accepts such terms; further, similar terms may be found in the covenants, conditions and restrictions ("**CC&Rs**") for communities in which homeowner's associations are established and, pursuant to such CC&Rs, Contractor and such associations agree to utilize arbitration for resolution of construction-related disputes. Subcontractor acknowledges and agrees that, regardless of the forum that is used for dispute resolution with a single homeowner, multiple homeowners or an association involving or arising out of any Work, any Work Agreement or this Subcontract, Subcontractor shall fully and willingly participate in such dispute resolution forum. Without limiting the generality of Paragraph 15 of this Subcontract, and provided that this Paragraph 11(d) shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and the public policy of the State, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Subcontract, Subcontractor agrees to at all times indemnify, defend (with legal counsel selected by Contractor in its sole and absolute discretion) and hold harmless the Indemnified Parties, and each of them, from and against any and all Claims brought by homebuyers pursuant to the Limited Warranty (or associations pursuant to applicable CC&Rs) and to participate fully and at Contractor's request in any proceeding brought pursuant to such warranties or CC&Rs in conformity with its indemnification obligations described in Paragraph 15 below.

(e) Subcontractor represents and warrants that it possesses all of the expertise, knowledge and skill necessary to perform all of the Work in a good, careful and workmanlike manner. Subcontractor shall hire only those employees, agents, suppliers and sub-subcontractors who are sufficiently skilled to perform the Work in a professional manner, the end product of which will be satisfactory to Contractor and consumers of Contractor's homes and in compliance with all provisions and requirements of this Subcontract. Subcontractor shall be responsible for all of the acts of its employees, agents, suppliers and sub-subcontractors while they are on any Project, including, without limitation, acts such as theft or vandalism.

Contractor Initials: _____ Subcontractor Initials: *JS*

(f) Any alterations or deviations from the plans and specifications dictated or required by any applicable provisions of Laws or in order to assure that the finished product to be furnished by Subcontractor will be suitable for its intended use and in compliance with all provisions and requirements of this Subcontract shall be the responsibility of Subcontractor and, at Subcontractor's expense, unless the deviation or change is specifically and immediately called to Contractor's attention by Subcontractor.

(g) Subcontractor shall not cover over, hide, or fail to disclose to Contractor any shoddy, defective, incomplete, inadequate, nonconforming, or otherwise inferior Work, whether performed by Subcontractor or any other entity, and will immediately report discovery of any such condition to Contractor. If Subcontractor fails to comply with this provision, Subcontractor shall be responsible for all damages, costs, expenses, warranty work, consequential damages, or other Claims or liability arising directly or indirectly from such conditions.

12. Proprietary Nature of Plans. Contractor's architectural, structural, civil and landscape drawings, plans and specifications, and all other design materials with respect to each Project (the "**Design Documents**") are and shall remain the property of Contractor whether or not any Project is built. Subcontractor acknowledges and agrees that the Design Documents are privileged and proprietary in nature and that Contractor has and maintains copyrights to the Design Documents under applicable state and federal Law. Subcontractor shall return all Design Documents and all copies thereof to Contractor at the request of Contractor at the completion of the Work or earlier termination of this Subcontract. Except as necessary to complete any Project, Subcontractor shall not copy or otherwise reproduce the Design Documents in any way without the express written permission of Contractor. Further, submission or distribution to meet official regulatory requirements or for all other governmental approval purposes in connection with a Project shall not be construed as a publication that undermines or otherwise derogates Contractor's ownership rights.

13. Assignment. Subcontractor acknowledges that Contractor is relying upon the experience, expertise and ability of the present officers, stockholders, members and/or partners of Subcontractor to cause all of the terms and provisions of this Subcontract to be fulfilled. Subcontractor shall not (i) assign this Subcontract or any Work Agreement, or (ii) subcontract the whole or any part of this Subcontract or any Work Agreement, without first obtaining the written consent of Contractor, which consent Contractor may withhold in its sole and absolute discretion. In the event of any material change in any of the officers, stockholders, members or partners of Subcontractor prior to the completion of the Work on any Project, Contractor shall have the right, at its option, to terminate this Subcontract and any Work Agreement pursuant to Paragraph 25 below. Subcontractor shall not assign any amounts due or to become due under this Subcontract or any Work Agreement without first receiving written consent to such assignment from Contractor. Any attempt by Subcontractor to assign any part of this Subcontract or any Work Agreement without the express written consent of Contractor is completely ineffective, unenforceable and void. Contractor may assign this Subcontract and any Work Agreement without the consent of Subcontractor.

14. Insurance. Subcontractor shall, at Subcontractor's sole cost and expense, comply with the insurance requirements set forth in Exhibit D – Insurance Requirements attached hereto and incorporated herein for the entire Term of this Subcontract and thereafter, as set forth below and in Exhibit D.

(a) Prior to the start of any Work, and prior to entering onto any Project Site, Subcontractor shall document compliance with the insurance requirements of this Subcontract, including without limitation Exhibit D. Subcontractor shall furnish Contractor with copies of certificates of insurance, waiver of subrogation endorsement(s), additional insured endorsement(s), and primary and non-contributory endorsements as required in this Subcontract for all of such policies showing the insurance carriers, policy numbers, Subcontractor as the named insured, Contractor and Contractor's parent company, K. Hovnanian Companies, as additional insureds and expiration dates. Subcontractor's insurance policy shall not contain any exclusion or limitation as to coverage for residential construction or development, or multi-residential construction or development, or applicable to the Work contemplated by this Subcontract, or Endorsement ISO Form 2294 or similar endorsements. Subcontractor shall promptly provide Contractor with certified copies of insurance policies upon request of Contractor. In addition to any other conditions to payment by Contractor hereunder, no payments of the Contract Sum will be due to Subcontractor unless and until Subcontractor has documented compliance with all insurance requirements in this Subcontract, including without limitation Exhibit D, to the satisfaction of Contractor. If at any time Subcontractor's insurance fails to meet the requirements under this Subcontract, all payments may be held until the deficiency has been resolved acceptably to Contractor. Notwithstanding the foregoing, commencement or continuation of Work by Subcontractor and/or payment by Contractor shall not be deemed to relieve Subcontractor of any of the requirements under this Subcontract. Renewal certificates and endorsements shall be delivered to Contractor prior to the expiration of the existing policy or policies.

(b) No acceptance of insurance certificates or additional insured endorsements and no other act or omission by Contractor shall in any way limit or relieve Subcontractor of its duties and responsibilities under this Subcontract or any Work Agreement. Nothing in this Paragraph 14 shall in any way limit or relieve Subcontractor of its indemnification obligations under Paragraph 15 or otherwise. Any provision on any certificate of insurance provided by Subcontractor that states anything to the effect that the certificate does not confer any rights to insurance upon the certificate holder is hereby deemed deleted from said certificate.

Contractor Initials: _____ Subcontractor Initials: 

(c) Subcontractor hereby agrees to immediately notify (or cause its insurers or insurance broker to notify) Contractor of any receipt of a notice (and provide to Contractor a copy of any such notice) of cancellation, non-renewal or rescission received from an insurance carrier referring to or relating to a policy which names Contractor or any of the other parties named as additional insureds or which may otherwise impact the ability of Subcontractor to fully perform its obligations hereunder or under any Work Agreement (including, without limitation, the indemnity obligations of Subcontractor set forth in Paragraph 15 below).

(d) If Subcontractor fails (i) to comply with any of Contractor's insurance requirements stated in this Subcontract and its Exhibits; or (ii) fails to pay its insurance premium(s), Contractor may enforce any or all of the following rights: (1) Contractor may place any payments due Subcontractor on hold until such time as Subcontractor becomes compliant with Contractor's insurance requirements; (2) Contractor may charge Subcontractor a one percent (1%) monthly charge on any payments due Subcontractor to reimburse Contractor for any damages incurred, including, but not limited to, increased overhead, insurance charges, or other costs; and/or (3) Contractor may charge Subcontractor a(n) (additional) one percent (1%) monthly charge on any payments due Subcontractor as a penalty for deficient insurance. The one percent (1%) monthly charge as a penalty may increase up to three percent (3%) if Subcontractor remains noncompliant in consecutive months. Subcontractor understands and agrees that the rights and remedies set forth in the preceding sentence are in addition to any other rights and remedies that Contractor may have provided in this Subcontract, at equity or at law, including but not limited to, Contractor's right (without any obligation to do so, however), to (x) terminate this Subcontract and any and all outstanding Work Agreements pursuant to Paragraph 25 hereof or (y) secure insurance in the name of and for the account of Subcontractor, in which event, Subcontractor shall pay the cost thereof (which Contractor may deduct from sums due Subcontractor under this Subcontract) and shall furnish, upon demand, all information that may be required in connection therewith. Notwithstanding anything to the contrary, waiver or modification of any of these insurance requirements, including the amount or extent of coverage, may only be obtained upon Contractor's written consent, which consent Contractor may limit or withhold in its sole and absolute discretion and which consent shall only be effective if provided in writing by an authorized officer of Contractor.

(e) If Subcontractor is out of business or otherwise unavailable at the time a claim or demand is presented to Contractor, to the extent permitted by Law, Subcontractor hereby assigns to Contractor each and every and all of its rights under all potentially applicable policies of insurance.

(f) Subcontractor hereby waives any right of subrogation which it or its insurers may have against Contractor or any of the other additional named insureds described on **Exhibit D** with regard to any loss, injury or damage arising out of or incident to any Work or any Project. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not such person or entity had an insurable interest in the property damaged.

(g) Subcontractor shall require all of its sub-subcontractors and suppliers of every tier to: (i) procure and maintain all of the same insurance coverages which are required of Subcontractor under this Subcontract; and (ii) furnish Contractor with certificates of insurance which evidence all of the coverages required under this Subcontract, which include all required attachments and additional insured endorsements, and which afford the same guarantee of notice of cancellation, non-renewal, rescission or reduction or restriction of coverage as is required of Subcontractor under this Subcontract.

15. Indemnification.

(a) With the exception that this Paragraph 15 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and the public policy of the State, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Subcontract, Subcontractor agrees to indemnify, defend (with legal counsel selected by Contractor in its sole and absolute discretion), and hold harmless Contractor and its divisions, affiliates, parents and subsidiary companies, and its officers, partners, designees, directors, shareholders, members, consultants, predecessors, successors, assigns, agents, representatives and employees, and any lender of Contractor with an interest in any Project, and each and all of them (individually, "**Indemnified Party**" and collectively, "**Indemnified Parties**"), and each of them, from and against any and all claims, demands, causes of action, liabilities, judgments, settlements, losses, costs, inspections, re-inspections, damages and/or expenses in law or equity, contract or tort, (including, without limitation, attorneys' fees, professional, expert and consultant fees, court costs, investigative costs, postage costs, document copying costs, telecopy costs and other costs and any and all other costs and expenses, (collectively, "**Defense Expenses**")) of every kind and nature whatsoever (collectively, the "**Claim**" or "**Claims**") that is caused by Subcontractor's activities conducted, in, at, about or on any Project, including, without limitation, any act or omission to act, active or passive negligence, or willful misconduct, by or for Subcontractor, anyone directly or indirectly employed, hired or used by Subcontractor or anyone for whose acts Subcontractor may be liable. THIS INDEMNIFICATION OBLIGATION COVERS, WITHOUT LIMITATION, ALL CLAIMS that include: (i) personal injury, bodily injury or death (including, without limitation, emotional injury, physical injury, sickness, disease or death to any person, including, without limitation, employees, agents, sub-subcontractors and suppliers of Subcontractor, homeowners or guests of homeowners); (ii) defects in or damage to property of any kind whatsoever, including, without limitation, loss of use, enjoyment or occupancy thereof, or violation of building codes and/or Laws; (iii) penalties imposed or extra costs required on account of

Contractor Initials: _____ Subcontractor Initials: 

the violation of, or failure to comply with, any Law, caused by or contributed to as a result of Subcontractor's presence, or activities conducted by or for Subcontractor, in, at, about or on any Project, including, without limitation, any act or omission to act by or for Subcontractor; (iv) infringement of any patent rights which may be brought against Contractor arising out of or relating to the Work; (v) failure of Subcontractor to provide or maintain any insurance as required hereinabove; (vi) any violation or infraction by Subcontractor of any Law in any way relating to the occupational health or safety of employees, including, without limitation, the use of Contractor's, or others', equipment, tools, hoists, elevators or scaffolds; (vii) defects in workmanship or materials and/or design defects (if the design originated with Subcontractor); and (viii) Subcontractor's presence, or activities conducted, in, at, about or on any Project (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Subcontractor, its principals, partners, members, officers, agents, employees, vendors, suppliers, consultants, subconsultants, sub-subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). Contractor and Subcontractor agree that Contractor's right to seek equitable indemnity and/or contribution from Subcontractor is in no way diminished or precluded by this agreement to provide express contractual indemnity and contribution to Contractor. Subcontractor's indemnification, defense and hold harmless obligations apply regardless of whether or not the injury and/or damage is caused in part by any active or passive negligence of an Indemnified Party. However, notwithstanding any contrary provision, nothing in this Paragraph 15, any other Paragraph of this Subcontract or any Exhibit hereto shall require Subcontractor to indemnify, hold harmless or defend any Indemnified Party from or against liability for loss or damage resulting from the sole negligence of the Indemnified Party, or the Indemnified Party's agents, employees or indemnitees. Contractor and Subcontractor agree that Contractor's right to seek equitable indemnity and/or contribution from Subcontractor is in no way diminished or precluded by this agreement to provide express contractual indemnity and contribution to Contractor.

(b) The indemnification, defense and hold harmless obligations of Subcontractor under this Paragraph 15 and elsewhere in this Subcontract or the Exhibits hereto (sometimes collectively, the "**Indemnification Obligations**") shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which Subcontractor is required to carry under this Subcontract. In Claims against any of the Indemnified Parties by an employee, agents, sub-subcontractors and suppliers of Subcontractor, or anyone directly or indirectly employed, hired or used by Subcontractor or anyone for whose acts Subcontractor may be liable, the Indemnification Obligations shall not be limited by amounts or types of damages, compensation or benefits payable by or for Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable. The Indemnification Obligations of Subcontractor shall be independent of and in addition to the Indemnified Parties' rights under the insurance to be provided by Subcontractor under this Subcontract. Such defense obligation shall arise immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Subcontractor. Payment to Subcontractor by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such Indemnified Party's rights to indemnification hereunder. Any obligation of Subcontractor to Contractor arising out of this indemnification clause shall bear interest as set forth below. Subcontractor acknowledges that Indemnified Parties (or any of them) may be strictly liable and this indemnification, defense and hold harmless provision applies whether the issue of Subcontractor's liability, breach of this Subcontract or other obligation or fault has been adjudicated and whether the Indemnified Parties (or any of them) have paid any sums or incurred any detriment, arising out of or resulting directly or indirectly from Subcontractor's performance of the Work or any other matter which may be the subject of indemnification hereunder. The Indemnification Obligations of Subcontractor shall apply with respect to any Claim, regardless of whether any allegation is made with respect to the negligence of, or fault of, Subcontractor. It is the parties' intention that the Indemnified Parties (or any of them) shall be entitled to obtain summary adjudication of Subcontractor's duty to defend the Indemnified Parties at any stage of any suit within the scope of this Paragraph 15. Subcontractor shall be liable to pay for the defense of the Indemnified Parties as the costs of defense are incurred (making payment within 30 days of receipt of billing) and at the amounts incurred. In the event one or more of the Indemnified Parties retains experts and/or legal counsel to defend as to multiple types of claims and/or as to the Work of multiple subcontractors, then Subcontractor agrees to, and shall, pay that portion of the bills (including without limitation, legal and expert expenses) that are allocated to Subcontractor's Work by the attorneys and experts retained by such Indemnified Parties for their defense.

(c) The Indemnification Obligations shall survive the expiration or earlier termination of this Subcontract, and shall continue until the last to occur of: (i) the last day permitted by Law for the filing of any Claims as to which the Indemnification Obligations may apply; or (ii) the date on which all Claims to which the Indemnification Obligations may apply are fully and finally resolved and paid by Subcontractor.

(d) Pursuant to the Indemnification Obligations, Subcontractor agrees to reimburse Contractor for all costs and expenses (including, without limitation, attorneys' fees, consultant fees, professional or expert fees, court costs, investigative costs, postage costs, document copying costs, telecopy costs and any and all other costs and expenses) incurred by Contractor in connection with any action brought by Contractor to enforce Subcontractor's obligations under the terms of this Paragraph 15 or any good faith settlement of such actions by Contractor.

(e) Subcontractor agrees that, upon written request of Contractor, Subcontractor shall participate as a party in, and also separately defend as set forth above, by paying Indemnified Parties' expenses as they are incurred with respect to any alternative dispute resolution proceeding (including settlement conferences, mediation and/or binding arbitration among other things) related to investigation and resolution of Claims, Claims brought pursuant to statute by homebuyers, successive homebuyers or homeowners' associations, or Claims arising out of the Limited Warranty or CC&Rs with such

Contractor Initials: _____ Subcontractor Initials: 

homeowners' associations (or Contractor's performance thereunder). In the event that Subcontractor participates in any proceeding, that participation shall not operate to alter or to reduce in any way Subcontractor's duty to indemnify, defend and hold harmless the Indemnified Parties, including without limitation paying all of the Indemnified Parties' Defense Expenses as they are incurred in connection with the proceedings in question.

(f) Pursuant to the Indemnification Obligations, in the event Contractor is served with any Writ of Attachment, Writ of Execution, Stop Notice, Notice of Levy (federal) or (state), claim of lien or other lien or legal process for any debt or alleged debt of Subcontractor, Contractor shall be entitled, pursuant to the Indemnification Obligations, to keep and retain any and all monies on all jobs then due Subcontractor for any Work and materials furnished and/or previously billed and approved but unpaid to Subcontractor in connection with this Subcontract and any Work Agreement. It is understood and agreed that the purpose of this retention is solely to guarantee that Contractor shall have sufficient funds with which to complete Subcontractor's obligations under this Subcontract, if the suit or levy out of which the above legal process arose should, in Contractor's opinion, make it difficult or impossible for Subcontractor to finish the Work.

(g) Subcontractor understands and acknowledges that, to the greatest extent permitted by Law, the Indemnification Obligations set forth in this Paragraph 15 are intended to extend to and include Claims arising from the active or passive negligence of, Indemnified Parties, except that nothing in this Subcontract shall require Subcontractor to indemnify, hold harmless or defend any Indemnified Party from or against liability for loss or damage resulting from the sole negligence of the Indemnified Party, or the Indemnified Party's agents, employees or indemnitees. This Paragraph 15 is intended to and shall be interpreted to provide for a specific indemnity of the Indemnified Parties to the fullest extent permitted by applicable Law, with only those particular words or provisions declared inapplicable if required by applicable Law. Subcontractor further understands and agrees that it shall immediately fulfill all of its Indemnification Obligations upon any Indemnified Parties' written notice to Subcontractor of any Claim and without any order of any court regardless of whether any Indemnified Parties have made any payments as to the Claims, including without limitation, any payments for Defense Expenses.

(h) Subcontractor's Indemnification Obligations shall extend, without limitation, to any and all Claims asserted or to be determined in alternative dispute resolution proceedings, including, without limitation, negotiations, conferences, mediations and/or arbitrations brought pursuant to the Limited Warranty issued by Contractor and/or by applicable Law.

(i) Notwithstanding the foregoing, this Paragraph 15 shall in no event be construed to limit Indemnified Parties' rights and remedies in the event of a breach of this Subcontract. This Paragraph 15 shall completely eliminate and preclude any right by Subcontractor to seek any contractual or equitable indemnity or contribution from Indemnified Parties. Further, Indemnified Parties' right to seek equitable indemnity or contribution from Subcontractor in no way shall be diminished or precluded by anything in this Subcontract.

16. Taxes and Tariffs. The Contract Sum shall be deemed to include any obligation Subcontractor may have to pay Federal, State and local taxes, tariffs and duties with respect to this Subcontract and any Work Agreement. All taxes levied or assessed against Contractor arising out of this Subcontract, any Work Agreement or the performance of any Work shall be paid by Subcontractor.

17. Changes in the Work.

(a) Contractor shall have the right, from time to time and without invalidating this Subcontract or any Work Agreement, to order changes to, additions to or deletions from the Work, the Contract Sum or the Completion Date (as hereinafter defined), or any other changes in the extent and character thereof, which Contractor deems necessary for the completion of the Work (collectively, "**Changes in the Work**"). Subcontractor shall make any and all Changes in the Work described in the Contract Documents (including this Subcontract and/or any Work Agreement) as directed by Contractor in writing. Such change or written direction shall not invalidate this Subcontract or any Work Agreement. In the event of any Changes in the Work, the Contract Sum shall be equitably adjusted as set forth below.

(b) Prior to the commencement of any Changes in the Work, Subcontractor shall submit a written claim for any required adjustment to the Contract Sum based upon the unit prices as established in Subcontractor's trade payment breakdown in this Subcontract or the applicable Work Agreement. Such adjustment shall be accepted in writing by Contractor unless Contractor believes such adjustment to be inequitable. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the Work unless it receives Contractor's written direction to the contrary and Contractor shall timely pay the undisputed amount due to Subcontractor for the changed Work. Subcontractor's acceptance of said amount shall not act as a waiver of any claim it has for additional disputed amounts.

(c) If Subcontractor makes any other changes to the Work without written direction from Contractor as provided in Paragraph 4(c) above, such change constitutes an agreement by Subcontractor that it will not be paid for that changed work even if Subcontractor claims to have received verbal direction from Contractor or any form of direction, written or otherwise, from any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liabilities of any nature whatsoever associated with or in any way arising out of any such change

Contractor Initials: _____ Subcontractor Initials: 

made without written direction from Contractor. Except as provided in Paragraph 4(c)(ii), the parties hereto specifically contemplate and agree that no verbal or oral modifications may be made to this Subcontract.

(d) If a dispute arises between Contractor and Subcontractor about whether particular Work constitutes a Change in the Work, Subcontractor shall timely perform the disputed Work and may give written notice of a claim for additional compensation for that Work. Such written notice or claim must be given within ten (10) days after such Work is performed. Subcontractor's failure to give written notice within the ten (10) days constitutes an agreement by Subcontractor that it will not be paid for the disputed Work.

18. Materials and Workmanship; Inspection and Testing.


(a) All materials used in the Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work and shall be new and of the most suitable grade of their respective kinds for the purpose. At the request of Contractor, Subcontractor shall furnish to Contractor for approval, full information, shop drawings, submittal data and/or samples concerning the materials or articles which Subcontractor intends to incorporate in the Work. The materials actually used in the Work shall conform to the information, submittal data or samples approved. Machinery, equipment, materials and articles installed or used without such approval shall be used by Subcontractor at the risk of subsequent rejection by Contractor in its sole and absolute discretion.

(b) Except as otherwise provided herein, all materials, workmanship and Work, if not otherwise designated by the Contract Documents, shall be subject to inspection, examination and testing by or for Contractor at any and all times during manufacture and/or construction and at any and all places when such manufacturing and/or construction are carried on. Subcontractor shall cooperate with Contractor, and any third party inspectors retained by Contractor, to permit a thorough inspection of the Work and to correct any deficiencies discovered during such inspections. Contractor shall have the right to reject improper or defective material, workmanship or Work or require correction without charge to Contractor. Subcontractor shall promptly segregate and remove rejected material from a Project Site. Nothing contained in this Paragraph 18 shall in any way restrict the rights of Contractor under any warranty by Subcontractor of material, workmanship or Work. Subcontractor acknowledges and agrees that Contractor has no obligation or duty to perform continuous or comprehensive inspections of any such materials, workmanship or Work. No such inspection, examination, testing or approval by or for Contractor shall be construed as an inspection or approval of material, workmanship or Work not in compliance with this Subcontract, the Contract Documents or applicable Laws. Neither the inspections referred to in this Paragraph 18, nor the failure to inspect, shall in any way relieve Subcontractor of its sole responsibility for properly performing the Work in accordance with this Subcontract, the applicable Work Agreement, the other Contract Documents and applicable Laws, or relieve Subcontractor of any of its liabilities or obligations, under this Subcontract, under any Work Agreement, under Law or otherwise. Subcontractor agrees to reimburse Contractor for any lender, Department of Veterans Affairs ("VA") and/or Federal Housing Administration ("FHA"), city, county, or any other public agency reinspection fees caused by its incomplete or faulty workmanship and/or materials.

(c) All materials and equipment furnished by Subcontractor are to be clean, new, carrying full manufacturers', distributors', and installers' warranties, manufactured within one (1) year of installation or of their use (whichever is more recent), and of first quality. Use of seconds, factory rejects, and remnants is expressly prohibited. It shall be Subcontractor's responsibility for any expiration of manufacturer and/or other warranties of material or equipment occurring prior to any warranty liability accruing pursuant to Paragraph 19 of this Subcontract. Subcontractor guarantees that all warranties of material and equipment shall become effective only at the later of (i) the date of a Notice of Completion of construction for the home or (ii) the date of the close of escrow of the applicable home to its first owner, not at the time of installation by Subcontractor. Subcontractor shall, prior to beginning any Work, provide to Contractor copies of all warranties and all manufacturers' installation and/or use instructions for all materials or equipment to be installed. In addition, Subcontractor shall leave in each unit, in a place convenient for homeowner, copies of all warranties and use instructions for items installed in each unit, and neither Subcontractor nor any of its employees, agents, sub-subcontractors and suppliers shall remove any warnings or instructions affixed to any item by the manufacturer.

19. Warranty and Customer Service.

(a) Subcontractor warrants and represents to Contractor that the workmanship of the Work, all materials and equipment furnished for the Work, and all other aspects regarding the Work to be performed under this Subcontract and any Work Agreement shall be in conformance with all Laws, this Subcontract, the applicable Work Agreement and the other Contract Documents, be of the finest quality, and be free from faults and defects of design, material and workmanship for at least the period(s) set forth in the Limited Warranty if not inconsistent with the dates set forth in this Agreement, which is incorporated herein by reference, or for such longer periods as may be required by FHA, VA, Federal Trade Commission ("FTC") and/or other applicable governmental authorities. Any portion of the Work which Contractor reasonably determines to be defective, deficient or non-conforming shall be repaired or replaced by Subcontractor in a manner reasonably satisfactory to Contractor. Subcontractor's obligations to repair or replace defective or non-conforming Work shall constitute additional work hereunder (the "Additional Work"), which obligations shall be effective upon the commencement of the Work and shall continue for the above described period(s) from and after the close of escrow ("COE") between Contractor

Contractor Initials: _____ Subcontractor Initials: 

and the original homeowner for the duration of the applicable warranty period. Responsibility for this Additional Work shall constitute part of Subcontractor's ongoing Work at a Project. The Additional Work shall be at Subcontractor's sole cost and expense, and Subcontractor shall use its best efforts to expeditiously repair or replace, in compliance with the procedures and timeframes established by Contractor or applicable Law, any and all defective, deficient or non-conforming Work, whether existing because of faulty workmanship, defective equipment, materials or otherwise. Subcontractor shall repair and/or replace any and all damage to the work of others caused by the defective, deficient or non-conforming Work or its repair or replacement. The remedies provided in this paragraph shall not be restrictive but shall be cumulative and in addition to all other remedies of Contractor hereunder and under applicable Law, including all Laws related to latent defects or fraud. Further, nothing in this paragraph shall restrict, limit or otherwise affect in any way Subcontractor's liability for the Work under applicable Laws. This provision shall be binding upon the successors and assigns of Subcontractor and shall benefit the successors and assigns of Contractor, including homeowners of residences and successors-in-interest or subsequent purchasers of residences within a Project.

(b) Notification of the need for Additional Work shall be either written or verbal from Contractor and shall be at the sole and absolute discretion of Contractor's designated representative. Except as hereinafter provided, all non-emergency Additional Work shall be responded to within two (2) business days of notification and shall be completed within two (2) business days after commencement of the Additional Work unless the required work reasonably takes longer than 2 business days to complete, in which case, Subcontractor will work diligently to complete the work as quickly as possible. Emergency service requests are to be handled immediately. Response time for emergency items shall not exceed four (4) hours. Contractor's designated representative shall have the final decision on classification of emergencies. In addition, all subcontractors for HVAC, electrical or plumbing work shall be required to be reachable by an emergency telephone number on a 24-hour per day, 365-day per year basis. In the event Subcontractor, its agents, sub-subcontractors or employees or its material suppliers fail to keep a scheduled appointment with any homeowner to perform Additional Work, Contractor shall have the right to fine or "backcharge" Subcontractor \$250.00 per violation.

(c) It is the responsibility of Subcontractor to obtain a signature, on Contractor's form, of the residents of the home serviced after such Additional Work has been completed to verify the satisfaction of such resident. The work sheet signed by the applicable homeowner shall be promptly mailed to the attention of the "Homeowner Service Office" of Contractor at the address of Contractor set forth in the first paragraph hereof. If any complaint is not satisfactorily serviced and completed within the times specified above, Contractor shall have the right, but not the obligation, to take the necessary steps to complete said Additional Work and backcharge Subcontractor appropriately unless Subcontractor can prove in writing that the complaint could not be taken care of due to (a) the inaccessibility of the residence or (b) some other reasonable explanation that such Additional Work was not provided. Notwithstanding the foregoing, Subcontractor shall use its best efforts to complete service requests within the specified time. Subcontractor shall supply all equipment, labor and materials necessary to complete the Additional Work within the time period provided, and shall be responsible for cleaning and restoring the home to its original condition upon completion of the Additional Work. Notwithstanding the foregoing, if Contractor reasonably deems it more expedient to correct any of the Work covered by this warranty itself because of any delay by Subcontractor, Contractor may elect to correct such Work using Contractor's own resources and a "backcharge" shall be made pursuant to Paragraph 26 below for the cost of such corrective work.

(d) All of the products supplied as part of or incidental to the Work and Additional Work are subject to and include all implied warranties provided by common law or in the Uniform Commercial Code, as codified in the State statutes.

(e) Subcontractor does hereby assign to Contractor (and any purchaser from Contractor) (as applicable) all manufacturers', suppliers', distributors' and all other sub-subcontractors' warranties, and all other rights against such manufacturers, suppliers, distributors and sub-subcontractors with respect to Work, materials and equipment furnished hereunder. Such assignment shall not relieve Subcontractor of any of its other obligations contained in the Contract Documents.

(f) Subcontractor shall comply with and satisfy and shall cooperate reasonably in good faith with Contractor so that Contractor may comply with and satisfy any requirements and/or obligations related to its warranty or contractual obligations with the homeowners pursuant to the Limited Warranty with respect to any Claim arising out of or relating to the Work. Such cooperation shall include, without limitation, assisting Contractor (as determined by Contractor in its sole and absolute discretion) in complying with deadlines in responding to Claims by homeowners, participating in inspections, participating in mediation, arbitration and other alternative dispute resolution proceedings, and assisting Contractor (as determined by Contractor in its sole and absolute discretion) in preparing offers to repair and performing such repairs (to the extent requested or permitted under Contractor's warranty or warranties or applicable Law). Contractor shall have the right to institute rules and regulations, and fines for failure to comply, with respect to customer service appointments including fines if Subcontractor fails to keep an appointment with a customer and requiring Subcontractor wear "booties" or other protective clothing to protect the floor and carpets in residences.

(g) To the extent requested by Contractor, Subcontractor shall participate in the investigation and resolution of claims submitted to Contractor pursuant to the Arizona Purchaser Dwelling Act (A.R.S. §12-1361, et. seq., effective August 22, 2002, as amended from time to time) ("PDA"), including any homeowner customer service requests, and/or any formal claims, mediation, binding arbitration and/or other alternate dispute resolution processes following any PDA proceedings or

Contractor Initials: _____ Subcontractor Initials: 

resulting therefrom ("**Homeowner Claims Process**"). Contractor will compensate Subcontractor for its time in participating in the Homeowner Claims Process provided that if the claims relate to alleged deficiencies in the Work, then Subcontractor's participation will be without charge to Contractor.

20. Time and Schedule of Work.

(a) Time is of the essence with respect to the performance of Subcontractor's duties under this Subcontract and all Work Agreements inasmuch as failure of the Subcontractor to commence and complete Work as and when required by Contractor may cause grave injury and damage to Contractor by virtue of increased costs for construction financing, loss of interest on invested funds, loss of sales and goodwill, extension of overhead costs and otherwise. Should Contractor waive any time for performance of anything required to be done by Subcontractor under this Subcontract or any Work Agreement, such waiver shall not be construed to be a waiver of any other or future time for performance of any other obligation of Subcontractor hereunder or thereunder.

(b) Subcontractor shall be given a "Notice to Proceed" for the commencement of the Work under each Work Agreement and Subcontractor shall be prepared to commence the Work within three (3) business days of Contractor's delivery of said notice. Such notice shall be given as Contractor determines that a Project has reached the stage of construction, in accordance with the Contract Documents, where Subcontractor's services are to be used.

(c) Subcontractor agrees to conform to the progress schedule issued by Contractor without delaying or hindering Contractor's work or the work of other contractors or subcontractors. This schedule, and any subsequent revisions thereto issued by Contractor, shall be deemed acceptable to Subcontractor unless Contractor is notified by Subcontractor in writing within five (5) days of the issuance of the schedule or revised schedule as applicable. Contractor shall have complete control of each Project Site on which the Work is to be performed and shall have the right to decide the time and order in which various portions of the Work shall be installed and the relative priority of the Work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the Work of Subcontractor on each Project Site.

(d) Subcontractor shall, in addition to all of the other obligations imposed by this Subcontract and the applicable Work Agreement upon Subcontractor, work such overtime as may be necessary, in the opinion of Contractor to meet the progress schedule issued by Contractor from time to time and approved, or deemed approved, by Subcontractor. Overtime work shall be at Subcontractor's own cost and expense only if Subcontractor is at fault in failing to maintain Contractor's schedule.

(e) Contractor and Subcontractor each recognize that in the event Subcontractor fails to timely perform the Work hereunder, notwithstanding any action taken by Contractor pursuant to the first sentence of Paragraph 20(d) above, Contractor will suffer substantial damages, including increased interest and carrying charges, administrative costs, loss of goodwill, lost profits and damages to business reputation. If Subcontractor should default in performance of the Work or should otherwise commit any act which causes delay, Subcontractor shall be liable for all losses, costs, expenses, claims, causes of action, demands, liabilities and damages, including incidental damages, consequential damages, lost profits and liquidated damages, sustained by Contractor, or for which Contractor may be liable to any party because of Subcontractor's default.

(f) Contractor and Subcontractor agree that the timely performance of the Work described in a Work Agreement is essential to the coordination of the completion of the construction of each of the housing units in the applicable Project. Subcontractor shall correctly measure and properly fit the Work and shall cooperate with Contractor in scheduling and performing the Work so as to avoid conflict or interference with the work of others on the Project Site. Subcontractor also agrees to prosecute the Work, and the several parts thereof, at such times and in such order as Contractor considers necessary to avoid any delay in the completion of the construction of the units in the Project. In the event Subcontractor detects inconsistencies or errors in the Contract Documents or the work of others on the Project, or in the sequencing of trades being utilized on the Project, such inconsistencies or errors shall be immediately reported to Contractor by Subcontractor. To the extent Subcontractor's Work shall be affected by the work of other trades or the Work shall affect other trades, Subcontractor agrees to cooperate fully with other tradesmen as may be necessary to ensure the complete coordination of the Project in its entirety as contemplated by the Contract Documents.

(g) Subcontractor shall coordinate the Work covered by a Work Agreement with that of all other contractors, subcontractors and that of Contractor, in a manner that will facilitate the efficient completion of the entire work on the applicable Project. In the event Subcontractor fails to maintain its part of Contractor's schedule, it shall, without additional compensation, accelerate the Work as Contractor may direct until the Work is restored to being in accordance with such schedule. Contractor shall have the right to decide the time and order in which various portions of the Work shall be installed and the relative priority of the Work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the Work of Subcontractor on the Project.

(h) Should Subcontractor be delayed in the prosecution or completion of any Work by the act, neglect or default of Contractor, or should Subcontractor be delayed waiting for materials required by this Subcontract or the Work

Contractor Initials: _____ Subcontractor Initials: 

Agreement to be furnished by Contractor, or by acts of God, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the Work shall be extended by the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim for an extension is presented in writing to Contractor within forty-eight (48) hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed for completion.

(i) No claims for additional compensation or damage for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this Subcontract or delays by other subcontractors, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor.

(j) If Subcontractor should default in performance of the Work or should otherwise commit any act which causes delay to Contractor's completion of a Project, Subcontractor shall be liable for all losses, costs, expenses, liabilities, and damages, including incidental damages, consequential damages, lost profits, attorneys' fees, expenses, court costs and liquidated damages, sustained by Contractor, or for which Contractor may be liable to any other party because of Subcontractor's default.

21. Protection of Work of Others. In carrying out the Work, Subcontractor shall take all necessary precautions to protect the Work and the work of other trades from damage caused by Subcontractor's operations. In the event that Subcontractor causes damage to any Project or to the property of Contractor or others, Subcontractor shall, at Subcontractor's sole cost and expense, promptly remedy such damage to the satisfaction of Contractor and any other applicable party. In the event Subcontractor fails to remedy such damage to Contractor's satisfaction within two (2) days of notice thereof from Contractor, Contractor may so remedy the damage itself and deduct the cost thereof from the Contract Sum.

22. Laws. All Work and materials furnished by Subcontractor shall conform to the requirements of all Laws. All Work shall meet with the approval and pass inspection of the city, county, and State where the Work is to be performed or materials are to be furnished. If the Work is being constructed under specification of the FHA and the VA, or either of them, such Work and materials furnished shall meet with all of the applicable requirements of the FHA and VA and shall be subject to applicable inspection of the FHA and VA. No Work is to be deemed completed until final inspection is approved by the city, county, state, or other applicable agency, as well as any inspection by Contractor.

Subcontractor shall ascertain the applicability of, give all notices required by, and comply with, all federal, State and local laws, statutes, ordinances, rules, regulations, codes, standards, citations and orders (individually a "Law" and collectively, "Laws") bearing on the performance of the Work and Subcontractor's prosecution thereof, including, without limitation, tax, social security, unemployment compensation, workers' compensation, immigration and naturalization, building codes and standards, OSHA regulations, ADOSH regulations, NPDES laws and regulations, dust control regulations, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, and the Safety Rules and Hazardous Substances Laws (as defined in **Exhibit E – Safety Procedures and Project Site Rules and Regulations** attached hereto and made a part hereof). Contractor reserves the right to enact, update, amend or replace the Safety Rules, Hazardous Substances Laws and other rules and regulations set forth on **Exhibit E**, at any time and from time to time as Contractor in its judgment may deem to be necessary or desirable for the safety, care and cleanliness of any Project, the Work, compliance with Laws and/or the preservation of good order therein, and Subcontractor agrees to comply therewith and to be bound thereby immediately upon notification thereof. Subcontractor shall secure and pay for all permits and governmental fees, taxes, licenses and inspections necessary for the proper execution and completion of the Work. Without limiting the generality of Paragraph 15 of this Subcontract, and provided that this Paragraph 22 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and the public policy of the State, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Subcontract, Subcontractor agrees to at all times indemnify, defend (with legal counsel selected by Contractor in its sole and absolute discretion) and hold harmless the Indemnified Parties, and each of them, from and against any and all Claims caused by failure by Subcontractor, its employees, suppliers, sub-subcontractors and/or agents to comply with any Laws or the provisions of this Paragraph 22 (regardless of whether said failure to comply results in property damage or "resultant" damage), including, without limitation, any fines, penalties or corrective measures.

In particular, Subcontractor agrees that during the performance of this Subcontract it will not discriminate against any employee, supplier or sub-subcontractor applicant for employment or sub-subcontract because of race, religion, sex, color, or national origin and will take affirmative action to ensure that applicants are employed or hired and that employees, suppliers and sub-subcontractors are treated in all respects during employment, without regard to their race, religion, sex, color, or national origin. Subcontractor agrees to post in conspicuous places, available to employees, suppliers and sub-subcontractors and applicants for employment and sub-subcontract, notice to be provided setting forth the provisions of this nondiscrimination clause and to state, in all solicitations and advertisement for employees placed by or on behalf of Subcontractor, that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, or national origin. Subcontractor shall, at its own expense, conform to the equal employment opportunity policies of Contractor, and, in addition, shall comply with all equal employment opportunity requirements promulgated by any

Contractor Initials: _____ Subcontractor Initials: 

governmental authority, including without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive Orders 11246, 11275, and 11478, any other applicable local, state or federal Laws, plans or programs, which have been or shall be promulgated or approved by the parties or agencies which administer such Acts or Orders (hereinafter collectively referred to as "EEO Laws"). Subcontractor shall have and exercise full responsibility for compliance hereunder by itself and its agents, employees, suppliers and sub-subcontractors with respect to the Work. Subcontractor shall directly receive and respond to, defend and be responsible for any citation, order, claim, charge or contract to so comply, regardless of whether such non-compliance results from active or passive acts or omissions or whether such non-compliance is the sole or a contributory cause of any of those matters against which Subcontractor is obligated hereunder to indemnify, defend, and hold harmless any Indemnified Party. Without limiting the generality of Paragraph 15 of this Subcontract, and provided that this Paragraph 22 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and the public policy of the State, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Subcontract, Subcontractor agrees to at all times indemnify, defend (with legal counsel selected by Contractor in its sole and absolute discretion) and hold harmless the Indemnified Parties, and each of them, from and against any and all Claims (including, without limitation, any loss of profits or prospective advantage occasioned by the suspension, cancellation or termination of any contract, or Contractor's eligibility therefor), including litigation for harm to persons or property, Defense Expenses or any other applicable costs which may be incurred by Contractor caused by Subcontractor's failure to fulfill the covenants set forth in this Paragraph 22.

23. Bankruptcy.


(a) In the event of the appointment of a receiver for Subcontractor or in the event Subcontractor makes an assignment for the benefit of creditors, Contractor may terminate this Subcontract and/or any or all Work Agreements by giving three (3) business days written notice to Subcontractor and its surety, if any. If a voluntary or involuntary petition under any federal or state bankruptcy or debtor protection Law is filed with respect to Subcontractor, Contractor may terminate this Subcontract and/or any or all Work Agreements by giving three (3) business days written notice, to Subcontractor.

(b) If Subcontractor is not performing the Work in accordance with this Subcontract, any Work Agreement or any Work Order at the time of any bankruptcy filing or the entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept and provide adequate assurance of its ability to perform hereunder, may immediately avail itself of such remedies as are reasonably necessary to maintain the progress of the completion of any Project or Projects which are the subject of any outstanding Work Agreements. Contractor may offset against the Contract Sum all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorneys' fees, expenses and court costs. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Sum.

(c) In the event that Subcontractor has proceeded to file a petition with the Bankruptcy Court under the applicable bankruptcy Laws during the pendency of any Claim, Subcontractor agrees that, upon request of Contractor, it shall immediately stipulate to an order granting relief from any automatic stay then in effect so as to allow Contractor to proceed against any insurance carrier covering Subcontractor for the Work or any obligations described in this Subcontract as well as any insurance carrier having issued certificates or endorsements to Contractor, its parent, subsidiaries and/or affiliates as additional insureds.

24. Patents. Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees which may become due as the result of Subcontractor's inclusion of any patented materials in the Work. Without limiting the generality of Paragraph 15 of this Subcontract, and provided that this Paragraph 24 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and the public policy of the State, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Subcontract, Subcontractor agrees to at all times indemnify, defend (with legal counsel selected by Contractor in its sole and absolute discretion) and hold harmless the Indemnified Parties, and each of them, from and against any and all Claims, including Defense Expenses, caused by Subcontractor's operations to be performed under this Subcontract for, but not limited to the infringement of any patent or other intellectual property rights, which may be brought against Contractor caused by Subcontractor's Work.

25. Subcontract Termination; Withholding Payments. Contractor may at any time and for any reason, terminate Subcontractor's services and any Work at Contractor's sole convenience. Termination shall be by service of written notice to Subcontractor's place of business. No warning notice, notice to cure or similar document shall be required to be provided to Subcontractor by Contractor. Upon receipt of the notice of termination from Contractor, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the applicable Work which is the subject of the termination notice and placing of orders for materials, facilities and supplies in connection with the performance of this Subcontract and the applicable Work Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such Work as

Contractor Initials: _____ Subcontractor Initials: 


may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the applicable Project Site or in transit thereto. Upon such termination, Subcontractor shall be entitled to payment for the Work completed in conformity with this Subcontract and the applicable Work Agreement; however, there shall be deducted from such sum the amount of any payments made to Subcontractor prior to the date of the termination of this Subcontract and/or the applicable Work Agreement and all applicable backcharges per Paragraph 26. The payment described above shall be Subcontractor's sole and exclusive remedy in connection with a termination by Contractor and Subcontractor hereby waives any right to pursue Contractor for lost profits, incidental damages or consequential damages associated with such termination. Such termination payment procedure shall be effective whether such termination resulted from Subcontractor's default or Contractor's convenience. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or any other person or entity for any additional compensation or damages in the event of such termination and payment. Contractor may terminate any one or more Work Agreements in whole or in part without affecting Subcontractor's obligations with respect to any Work or Work Agreement(s) not so terminated.

Contractor may withhold, or on account of subsequently-discovered evidence nullify, the whole or part of any payment under this Subcontract and any Work Agreement to the extent necessary to protect Contractor from loss, including costs and attorneys' fees, expenses and court costs, on account of (i) defective Work not remedied; (ii) claims or liens filed or reasonable evidence indicating the probable filing of claims or liens; (iii) failure of Subcontractor to make payments promptly to its sub-subcontractors, vendors, suppliers or laborers for material, labor or fringe benefits; (iv) reasonable doubt that this Subcontract can be completed for the balance then unpaid; (v) damage to the work of another subcontractor; (vi) claims made or penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with Laws; (vii) any dispute or controversy between the parties hereto concerning this Subcontract or any Work Agreement, or any dispute concerning Subcontractor and another subcontractor or vendor; (viii) breach of this Subcontract or any Work Agreement; (ix) failure to pay, on behalf of any employee, federal or State withholding, FICA, employee benefits (including union trust fund or cooperative committee payments, SRS and ESD, if applicable), or any other required payments on behalf of any employee to a governmental agency; (x) any monies that are claimed by Contractor or any third party against Subcontractor for injuries incurred as a result of any Work performed by Subcontractor; or (xi) any other ground for withholding payment allowed by Law or as otherwise provided in this Subcontract or any Work Agreement. When and to the extent that the above matters are satisfactorily rectified in the sole judgment and discretion of Contractor, such withheld amounts as may then be due and owing shall be paid or credited to Subcontractor.

26. Backcharges. In the event of any Withholding Condition (as defined in **Exhibit B-1**), Contractor may backcharge, and withhold from payment otherwise owed, an amount that is sufficient to pay the direct expenses the Contractor reasonably expects to incur to correct any items set forth in any Withholding Notice. In the event that the Retained Percentage or amount of any other final payment is insufficient to satisfy the backcharge(s), including administrative charges, Contractor shall have the right to require Subcontractor to pay Contractor the amount of the backcharge(s) (including the applicable administrative charges) within fifteen (15) days after Subcontractor's receipt of an invoice therefor. Subcontractor's failure to make such payment in the prescribed period shall constitute a default hereunder.

27. Breach of One Contract is Breach of All. Subcontractor and Contractor acknowledge that during Subcontractor's performance of any Work Agreement entered into pursuant to this Subcontract, Subcontractor may also be under contract with Contractor or one or more of its affiliates for work at Contractor's (or such affiliates) other projects or subdivisions under other subcontracts or agreements. At Contractor's sole election, a breach in the performance of any of Subcontractor's obligations under this Subcontract and/or any Work Agreement entered into pursuant to this Subcontract shall constitute a breach in Subcontractor's obligations under any other Work Agreements and/or any other agreement(s) with Contractor or its affiliates and a breach under any other agreement(s) with Contractor shall also constitute a breach of Subcontractor's obligations under this Subcontract and any and all Work Agreements entered into pursuant to this Subcontract. In such event, and in addition to Contractor's rights and remedies under this Subcontract, Contractor or such affiliates may terminate any or all of such other subcontracts or other agreements, may withhold monies due or to become due on any of such subcontracts or other agreements and apply the same toward payment of any damages suffered on that or any other subcontract or agreement.

28. Determination of Contractor for Specific Project. Subcontractor acknowledges and agrees that both K. Hovnanian Great Western Building Company, LLC and K. Hovnanian Building Company, LLC have contractor's licenses and are engaged in the business described in Paragraph 1 of this Subcontract. Subcontractor and K. Hovnanian Great Western Building Company, LLC and K. Hovnanian Building Company, LLC desire to enter into one Subcontract for all of the services that Subcontractor will provide to both K. Hovnanian Great Western Building Company, LLC and K. Hovnanian Building Company, LLC. As such, both K. Hovnanian Great Western Building Company, LLC and K. Hovnanian Building Company, LLC are signing this Subcontract. In connection with each Project, the Work Agreement for such Project shall designate which Contractor entity (e.g., either K. Hovnanian Great Western Building Company, LLC or K. Hovnanian Building Company, LLC) is the "Contractor" for that Project. Upon the designation of the Contractor in the Work Agreement, such Contractor (e.g., either K. Hovnanian Great Western Building Company, LLC or K. Hovnanian Building Company, LLC) shall be deemed the Contractor for such Project for all purposes under this Subcontract, and such Contractor shall be entitled to all rights, remedies and privileges afforded to Contractor under this Subcontract with respect to such Project.

Contractor Initials: _____ Subcontractor Initials: 

Notwithstanding anything in this Subcontract to the contrary, (i) K. Hovnanian Great Western Building Company, LLC will not have any liability, responsibility, obligation, or duty under this Subcontract pertaining to a Project for which a Work Agreement is executed between Subcontractor and K. Hovnanian Building Company, LLC, and (ii) K. Hovnanian Building Company, LLC will not have any liability, responsibility, obligation, or duty under this Subcontract pertaining to a Project for which a Work Agreement is executed between Subcontractor and K. Hovnanian Great Western Building Company, LLC. Moreover, K. Hovnanian Great Western Building Company, LLC shall not be jointly and severally liable for the obligations, liabilities and duties of K. Hovnanian Building Company, LLC, and K. Hovnanian Building Company, LLC shall not be jointly and severally liable for the obligations, liabilities and duties of K. Hovnanian Great Western Building Company, LLC.

29. Protection of Materials. All Work covered by this Subcontract and any Work Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to any Project shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Contractor. Contractor shall have no obligation to insure or protect Subcontractor's materials, tools, equipment or other property from theft, vandalism or other loss or damage. Subcontractor shall assume all responsibility for insuring and/or securing and protecting its materials, tools, equipment or other property from theft, vandalism or other loss or damage until final acceptance of the Work by Contractor. In the event any of Subcontractor's tools, equipment or other property are lost, stolen, vandalized or otherwise damaged at any time or in the event that Subcontractor's materials are lost, stolen, vandalized or otherwise damaged at any time prior to those materials becoming a fixed part of any housing unit in the applicable Project, Contractor shall have no responsibility for such loss, theft, vandalism or other damage and any damages caused to Subcontractor therefrom shall be the sole responsibility of Subcontractor.

30. Communications. Subcontractor acknowledges that it is required to have its field representative fully aware of all terms and approved revisions to this Subcontract. Prior to the commencement of any Work, Subcontractor shall notify Contractor who Subcontractor's field representative is for the Work and in the event of any change of representative, Subcontractor shall notify Contractor of such change prior to it becoming effective. It is also the responsibility of Subcontractor to cause its field representative to meet with Contractor's field superintendent at least once per week in a regularly scheduled meeting at the applicable Project Site. It is the responsibility of Subcontractor to have its representative present for all job meetings when called by Contractor. Subcontractor shall have a competent foreman or superintendent, satisfactory to Contractor, on the applicable Project Site at all times during progress of the Work, with authority to act on behalf of Subcontractor. In the event a bulletin board is erected in or around the field office of Contractor, Subcontractor or its representative will be required to check this board daily for information directly or indirectly affecting the Work. To the greatest extent permitted by Law, information posted on the bulletin board will be considered as information passed directly to Subcontractor and its authorized representative.

31. Independent Contractor. Subcontractor specifically acknowledges that it is an independent contractor and an employing unit subject as an employer to all applicable unemployment compensation statutes so as to relieve Contractor of any responsibility or liability for treating Subcontractor's employees as employees of Subcontractor for the purpose of keeping records, making reports, and payment of unemployment compensation taxes or contributions.

Subcontractor agrees in regards to (a) the production, purchase and sale, furnishings and delivering, pricing and use or consumption of materials, supplies and equipment; (b) the hiring tenure or condition of employment of employees and their hours of work and rates of and the payment of their wages; and (c) the keeping of records, making of reports, and the payment, collection, and/or deduction of federal, state and municipal taxes and contributions that Subcontractor will keep and have available all necessary records and make all payments, reports, collections and deductions, and otherwise do any and all things so as to fully comply with all federal, state and municipal Laws, ordinances and regulations in regards to any and all said matters insofar as they affect or involve Subcontractor's performance of this Subcontract, also to fully relieve Contractor from and protect it against any and all responsibility or liability therefore or in regard thereto.

Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

Subcontractor certifies, further, that it is an independent contractor, is free to contract with others, and in no way is an agent or employee of Contractor, and shall, at its sole cost and expense, and without increase in the Contract sum, comply with all Laws, including but not limited to any and all Safety Rules.

32. Labor Relations.

(a) Contractor represents and warrants that it is bound to the collective bargaining agreements, if any, listed as "Contractor's Agreements" and Subcontractor represents that it is bound to the collective bargaining agreements, if any, listed as "Subcontractor's Agreements" on **Exhibit F – Collective Bargaining Agreements** attached hereto and made a part hereof, and to no others. Subcontractor understands and agrees that any misstatement of the information listed on **Exhibit F**, whether intentional or unintentional, shall constitute a material breach of this Subcontract. Subcontractor agrees to comply with all of the terms and conditions of those labor agreements described in **Exhibit F** including trust fund payment

Contractor Initials: _____ Subcontractor Initials: 

into the respective labor trust funds set forth in the respective labor agreements referred to in **Exhibit F** insofar as Subcontractor may lawfully do so, and in particular agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work claimed by each of such crafts and the procedure contained therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

(b) Upon written or verbal request from Contractor, Subcontractor agrees to furnish Contractor with (i) certified payroll reports or (ii) any monthly trust fund reports submitted by Subcontractor. If Subcontractor is listed as delinquent in the payment of fringe benefits by any trust fund, it shall be regarded as a material breach of this Subcontract and Contractor may elect to terminate this Subcontract. If Subcontractor is listed as delinquent in the payment of fringe benefits by any trust fund, Contractor may, in its discretion, pay to the appropriate trust fund such amounts as Contractor determines in good faith are due and owing, and such amounts shall be deducted from the amounts Contractor would otherwise owe to Subcontractor.

(c) Subcontractor agrees that its obligations under this Subcontract (including, without limitation, timely completion of the Work) will not be excused or delayed on account of strikes, picketing or labor disputes, regardless whether Subcontractor is the primary employer in the labor dispute.


(d) Subcontractor understands and agrees that any Project may be run on a "dual-gate" or "reserve-gate" system. Should there be picketing on any Project Site, and Contractor establishes a reserve gate for Subcontractor's purpose, it shall be the obligation of Subcontractor to continue the proper performance of its Work without interruptions or delay. Subcontractor agrees that it shall be responsible for ensuring that its employees, agents, suppliers, visitors and its own sub-subcontractors enter and exit such Project Site through the appropriate gate, as designated by Contractor. If Subcontractor's employees, agents, suppliers, visitors or its own sub-subcontractors enter or exit through the wrong gate and thereby cause any labor union to expand the scope of its picketing, Subcontractor shall be liable to Contractor for all damages proximately caused thereby. Subcontractor further agrees that the failure or refusal of its employees, agents, suppliers or its own sub-subcontractors to perform Work because of picketing anywhere on any Project Site shall be regarded as a material breach of this Subcontract, regardless of whether the picketing is directed against Subcontractor and regardless of whether the picketing is ultimately determined to be unlawful secondary picketing or lawful primary picketing.

(e) Subcontractor shall comply with all Laws, including but not limited to all equal employment opportunity and affirmative action requirements and all Fair Labor Standards Act provisions and all relevant provisions of the labor statutes of the State covering the Work.

(f) Without limiting the generality of Paragraph 15 of this Subcontract, and provided that this Paragraph 32(f) shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and the public policy of the State, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Subcontract, Subcontractor agrees to at all times indemnify, defend (with legal counsel selected by Contractor in its sole and absolute discretion) and hold harmless the Indemnified Parties, and each of them, from and against any and all Claims, caused by Subcontractor's operations to be performed under this Subcontract for Subcontractor's failure to fulfill the covenants set forth in this Paragraph 32, including, without limitation, any and all claims (including, without limitation, claims that may be presented by virtue of any contract of employment under Subcontractor) for union welfare, pension, vacation, apprenticeship, owner-operator, health and welfare, and related payment obligations connected with any Project, whether or not well-founded.

(g) Contractor may terminate this Subcontract and/or any or all outstanding Work Agreements with Subcontractor (and Subcontractor shall so provide in contracts with its sub-subcontractors) in the event that Subcontractor, or its sub-subcontractors, are listed by the administrative office of the appropriate health and welfare, pension, vacation, apprenticeship, or other funds as being delinquent in payment, or payments, of said fund or funds, regardless of the Project in connection with which the alleged delinquency occurred. If this Subcontract and/or any or all outstanding Work Agreements is or are terminated pursuant to this provision or otherwise, Subcontractor shall be obligated to pay the entire cost of completion of the Work called for by this Subcontract and/or such Work Agreement(s) whether Contractor has said Work completed on a time and material basis or lets a new subcontract for completion of the Work. If Contractor elects not to terminate, pursuant to this provision, Subcontractor appoints Contractor (and Subcontractor shall similarly bind its sub-subcontractors) as Subcontractor's agent to use Contractor's judgment and discretion to pay such amounts as Contractor believes due and owing, pursuant to then existing collective bargaining agreements, to the appropriate administrative office, out of funds Contractor would otherwise be required to pay to Subcontractor(s). Contractor's determination as to amount(s) to be paid, if any, shall be final and binding as to Contractor and Subcontractor and Subcontractor releases Contractor from any liability arising directly or indirectly from Contractor's acts hereunder.

33. Service of Process. It is hereby expressly understood and agreed between the parties that, in the event a dispute should arise as to the performance of the obligations of the parties pursuant to this Subcontract or any Work Agreements, the parties will adjudicate any such dispute in the courts of the State pursuant to the Laws of the State, and the parties agree that each will accept service of process outside of the State with the same force and effect as if such process had been

Contractor Initials: _____ Subcontractor Initials: 

served within the State, and each of the parties agree and expressly consent to the jurisdiction of the Courts of the State or the United States District Courts located in the State, as set forth in Paragraph 34(i) below, which shall have in personam jurisdiction over the parties in connection with this Subcontract and any Work Agreements and in connection with any litigation which may arise as a result hereof or in connection herewith.

34. Contract Interpretation.

(a) Construction. This Subcontract and all Work Agreements shall be governed by and construed in accordance with the Laws of the State of Arizona.

(b) Partial Invalidity. The partial or complete invalidity of any one or more provisions of this Subcontract and/or any Work Agreement shall not affect the validity or continuing force and effect of any of the other provisions. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Subcontract or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

(c) Attorneys' Fees. Should either party employ an attorney to institute suit, demand arbitration or institute any other procedure for the resolution of a dispute in order to enforce any of the provisions hereof, to protect its interest in any matter arising under this Subcontract, or to collect damages for the breach of this Subcontract or to recover on a surety bond given by a party under this Subcontract, the prevailing party shall be entitled to recover its attorneys' fees, consultants and experts fees, costs, charges and expenses expended or incurred therein. Specifically, the parties hereto agree that should a dispute proceed to arbitration the arbitrator is empowered to award attorneys' fees to the prevailing party.

(d) Headings. The headings given to the paragraphs of this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purpose.

(e) Entire Agreement. This Subcontract and the Exhibits and Schedules attached hereto, and the Work Agreements entered into pursuant hereto, are solely for the benefit of the parties hereto and together represent the entire and integrated agreement between the parties hereto with respect to the subject matter hereof and supersede all prior negotiations, representations, or agreements, either written or oral.

(f) Authorization. The signature of any person on behalf of a party to this Subcontract and/or any Work Agreement shall be deemed a personal warranty by that person that such person has the power and authority to bind any corporation, limited liability company, partnership or any other business entity for whom that person purports to act.

(g) Amendments. No oral statement of any person shall in any manner or degree modify or otherwise affect the terms of this Subcontract or any Work Agreement. It is agreed that nothing done by Contractor in the performance of its obligations hereunder or in directing performance by Subcontractor shall be construed in any manner or to any extent whatsoever as a waiver by Contractor of any default in or a failure of performance of the terms and conditions of this Subcontract or any Work Agreement by Subcontractor. It is agreed that no person has or shall hereinafter have any power or authority to waive, modify, alter or rescind any provision of this Subcontract or any Work Agreement on behalf of Contractor except the person or persons whose names are affixed to this Subcontract as representatives of Contractor and except further, such persons who are authorized by the President or Secretary of Contractor, in writing, to agree to such waiver, modification, alterations or rescission and in the case of these latter persons, their authority shall be strictly limited to the terms of the writing granting them such authority.

(h) No Presumption or Construction Against Drafter. The terms of this Subcontract and each Work Agreement to be entered into pursuant hereto are and will be contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Subcontract or any Work Agreement.

(i) Jurisdiction. Each party expressly consents to the personal jurisdiction of either the State courts or the United States District Courts located in the State, except that actions to enforce any judgment or writ of attachment shall be prosecuted through the courts of the state in which the assets subject to enforcement are located.

(j) No Waiver. Neither the final payment nor any provision in any document shall relieve Subcontractor of responsibility for faulty materials or workmanship and Subcontractor shall, when notified of any such defects, promptly remedy the same and pay for any damage to any Project and/or other Work resulting therefrom.

(k) Notice. Any and all notices required or permitted hereunder shall be given in writing and be either personally delivered, sent by facsimile (delivery of which must be evidenced by a confirmation of successful transmission printed by the transmitting facsimile machine), sent by first class United States mail with postage prepaid or sent by prepaid overnight courier service providing evidence of receipt. All notices to be sent to Subcontractor shall be sent to the address shown on the cover page of this Subcontract. All notices to be sent to Contractor shall be sent to the address shown on the cover page of this Subcontract, **and to be effective, a copy of any such notice constituting a notice of default**

Contractor Initials: _____ Subcontractor Initials: 

hereunder must also be sent to Contractor by a method or methods permitted above to: **K. Hovnanian Homes, 20830 North Tatum Boulevard, Suite 250, Phoenix, Arizona 85050, Attn.: Chief Legal Counsel.**

This Subcontract is executed under the hands and seals of the parties, effective as of the last date set forth below the parties' signatures below.

As to Subcontractor:

Signature:  _____

Printed Name: Eric Lahti

Title: Controller

Date: 6/24/2016

As to K. Hovnanian Great Western Building Company, LLC:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

As to K. Hovnanian Building Company, LLC:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

[EXHIBITS TO FOLLOW]

Contractor Initials: _____ Subcontractor Initials:  _____

EXHIBIT A TO MASTER SUBCONTRACT

Form of Work Agreement

[To Follow]

Exh A(Cover) to Master Subcontract Agreement
Form of Work Agreement

Contractor Initials: _____ Subcontractor Initials:  _____

WORK AGREEMENT

Date Issued: 6/24/2016 Project Name: TBD
Subcontractor: RenCo, LLC Project County: TBD
Trade: Roofing

This Work Agreement is entered into as of the last date set forth after the parties' signatures below by and between [insert either: K. Hovnanian Great Western Building Company, LLC, an Arizona limited liability company or K. Hovnanian Building Company, LLC, an Arizona limited liability company] ("**Contractor**") and the Subcontractor identified above.

1. This Work Agreement incorporates by reference that certain Master Subcontract Agreement described above between Contractor and Subcontractor and all terms and provisions set forth therein. In the event of any irreconcilable inconsistency between the terms and provisions of this Work Agreement and the terms and provisions of the Master Subcontract Agreement, the terms and provisions of the Master Subcontract Agreement shall prevail, unless Contractor and Subcontractor specifically indicate their intent herein to supersede any term or provision in the Master Subcontract Agreement by identifying specifically such term or provision being superseded and indicating their intent to supersede such term or provision by separately initialing the paragraph herein in which it appears. This Work Agreement shall apply with respect to all work performed by Subcontractor on the Project described above (the "**Project**") and is intended to constitute a stand-alone contract, except to the extent otherwise provided in the Master Subcontract Agreement.

2. Unless earlier terminated in accordance with the terms and provisions of the Master Subcontract, this Work Agreement shall remain in full force and effect until completion of the Work on the Project. All contract pricing will be held through completion of the Work on the Project. Any revisions to the pricing after this Work Agreement will require a 30 day notice, in writing, and Contractor shall be entitled to seek a re-bid from other subcontractors if pricing is changed.

3. The Scope of Work under this Work Agreement shall be as provided in the Master Subcontract Agreement, the scope of which is more fully defined in **Exhibit A - Scope of the Work**, hereto.


(a) Subcontractor will comply with all conditions of the applicable Storm Water Pollution Prevention Plan (SWPPP), as more fully set forth in Exhibit E to the Master Subcontract Agreement.

(b) Subcontractor will comply with all conditions of the applicable dust control permit and future renewal permits as more fully set forth in Exhibit E to the Master Subcontract Agreement.

4. Pricing under this Work Agreement shall be as provided in: [check one]: Exhibit B - Pricing of the Master Subcontract Agreement or Exhibit B - Pricing hereto.

5. Payment Schedule: Per the Payment Process Procedure Memo and LR3 Calendar for the applicable year.
Retained Percentage: None

This Work Agreement is executed under the hands and seals of the parties, effective as of the last date set forth below the parties' signatures below.

As to Subcontractor:
Signature: 
Printed Name: Eric Lahti
Title: Controller
Date: 6/24/2016

As to Contractor:
Signature: _____
Printed Name: _____
Title: _____
Date: _____


Contractor Initials: _____ Subcontractor Initials: 

Exhibit A to Work Agreement

Scope of Work

Contractor Initials: _____ Subcontractor Initials:  _____

Exhibit B to Work Agreement

Pricing


Contractor Initials: _____ Subcontractor Initials: 

EXHIBIT B TO MASTER SUBCONTRACT

Pricing

"PRICING FOR EACH PROJECT SHALL BE AS SPECIFIED IN THE APPLICABLE WORK AGREEMENT FOR SUCH PROJECT"

EXHIBIT B-1 TO MASTER SUBCONTRACT

Payment Method(s)

Contractor agrees to pay Subcontractor for the Work which is completed in the manner required by this Subcontract, as such Work is completed, by the applicable method selected by Contractor. Contractor shall select the applicable method(s) of payment at any time and may alter such method of payment at any time by written notice to Subcontractor. Contractor is contemplating, but by no means is required, to change to an invoice-free system, in which event Subcontractor agrees to comply with such invoice-free system established by Contractor.

Upon submitting a request for payment in any of the formats described below, and in accepting any such payment, Subcontractor shall be deemed to have certified and acknowledged the following: (a) that it has received full payment for all Work performed to date (less any applicable Retained Percentage); (b) that all payroll costs, union benefits if applicable, material costs, equipment costs, fixture costs and indebtedness connected with, or incurred in the construction of the Work invoiced against Subcontractor then to date (including, without limitation, any indebtedness to any sub-subcontractor, material suppliers, agents, materialmen or employees) have been paid for in full, or will be paid from the amounts being invoiced, as the case may be; and (c) that the information under Paragraphs 4(b)(i), (ii), (iii) and (vi) of the Subcontract is true as of the date of such payment request or acceptance.

Payments to Subcontractor are made on the 1st and 15th of the month, or the first business day after if the 1st or 15th is a Saturday or Sunday for Work which is completed in accordance with this Subcontract. Contractor shall make payment of amounts owed to Subcontractor after the Subcontractor's invoice is approved and certified by Contractor. An invoice will be deemed "approved and certified" after Contractor receives the invoice in compliance with the terms of this Subcontract, unless before that time Contractor or Contractor's agent prepares and issues a written statement detailing those items in the invoice that are not approved and certified (a "**Withholding Notice**"). Contractor may decline to approve and certify an invoice, or portion thereof, for unsatisfactory job progress, defective construction Work or materials not remedied, disputed Work or materials, failure to comply with other material provisions of this Subcontract, or any Exhibit thereto, third party claims filed or reasonable evidence that a claim will be filed, failure of Subcontractor, or any sub-subcontractor, to make timely payments for labor, equipment and materials, damage to Contractor, or reasonable evidence that the Subcontract cannot be completed for the unpaid balance of the Contract Sum or a reasonable amount for retention (each a "**Withholding Condition**").

When Subcontractor completes all work under this Subcontract, and Contractor approves and certifies Subcontractor's final invoice therefor, Contractor shall make payment in full of amounts due under the Subcontract.

Subcontractor shall be paid in progress payments. In addition to any and all other conditions to payment, no request for payment shall be deemed approved and certified before the last of the following has occurred: (a) Subcontractor shall have submitted to Contractor a "properly prepared" invoice executed by Subcontractor; (b) Contractor's authorized representative shall have certified and approved Subcontractor's Work and signed such invoice; and (c) Subcontractor shall have delivered to Contractor appropriate lien waivers pursuant to Paragraph 7 of the Subcontract, including an unconditional progress or final lien release for the previous payment. All invoices must be submitted to Contractor's office at the address stated on the cover page of this Subcontract.

Subcontractor acknowledges that it is Contractor's policy not to pay any invoices that are received by Contractor more than ninety (90) days after the close of escrow on the house on which the Work was performed. As such, Subcontractor acknowledges and agrees that Subcontractor shall not receive payment in connection with any invoices that are delivered more than ninety (90) days after the close of escrow on the house on which the Work was performed.

EXHIBIT C-1 TO MASTER SUBCONTRACT
CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Project: _____
Job Number: _____

Upon receipt by the undersigned of a check from _____ (Maker of Check) in the sum of \$_____ (Amount of Check) payable to _____ (Payee or Payees of Check), and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document becomes effective to release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the job of _____ (Owner) located at _____ (Job Description) to the following extent. This release covers a progress payment for all labor, services, equipment, or material furnished to the jobsite or to _____ (Person with whom undersigned contracted) through _____ (Date) only and does not cover any retention, pending modifications and changes or items furnished after that date. Before any recipient of this document relies on it, that person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Date: _____

(Company Name)

By: _____
(Signature)

(Title)

Contractor Initials: _____ Subcontractor Initials: 

EXHIBIT C-2 TO MASTER SUBCONTRACT

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Project: _____
Job Number: _____

The undersigned has been paid and has received a progress payment in the sum of \$_____ for all labor, services, equipment or material furnished to the jobsite or to _____ (Person with whom undersigned contracted) on the job of _____ (Owner) located at _____ (Job Description) and does hereby release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the above referenced project to the following extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite or to _____ (Person with whom undersigned contracted) through _____ (Date) only and does not cover any retentions, pending modifications and changes or items furnished after that date. The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Dated: _____

(Company Name)

By: _____
(Signature)

(Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.


Contractor Initials: _____ Subcontractor Initials: 

EXHIBIT C-3 TO MASTER SUBCONTRACT

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Project: _____
Job Number: _____

On receipt by the undersigned of a check from _____ (Maker of Check) in the sum of \$_____ (Amount of Check) payable to _____ (Payee or Payees of Check) and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document becomes effective to release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, the undersigned has on the job of _____ (Owner) located at _____ (Job Description). This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished to the jobsite or to _____ (Person with whom undersigned contracted) except for disputed claims in the amount of \$_____. Before any recipient of this document relies on it, that person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this final payment to promptly pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Date: _____

(Company Name)

By: _____
(Signature)

(Title)


Contractor Initials: _____ Subcontractor Initials: 

EXHIBIT C-4 TO MASTER SUBCONTRACT

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Project: _____
Job Number: _____

The undersigned has been paid in full for all labor, services, equipment or material furnished to the jobsite or to _____ (Person with whom undersigned contracted) on the job of _____ (Owner) located at _____ (Job Description) and does hereby waive and release any right to mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, except for disputed claims for extra work in the amount of \$ _____.

The undersigned warrants that he either has already paid or will use the monies he receives from this final payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project.

Dated: _____

(Company Name)

By: _____
(Signature)

(Title)

NOTICE:

THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

Contractor Initials: _____ Subcontractor Initials: *SR*

EXHIBIT D TO MASTER SUBCONTRACT

Insurance Requirements

The Certificate Must:

- Be signed by the Issuing Agent.
- List Hovnanian's Additional Insured Wording for CGL.
- Provide at least thirty (30) days' notice of cancellation.
- Show complete insurance carrier names as listed in the A.M. Best Property & Casualty. Guide, Must have a rating of A- or better.
- Show Correct limits i.e. GL \$1,000,000 per occurrence.

The Certificate of Insurance must be completed in its entirety and signed.

Binders are not acceptable

Commercial General Liability (CGL) – (occurrence form) coverage not less than:

\$1,000,000	General Aggregate
\$1,000,000	Products and Completed Operations Aggregate
\$1,000,000	Each Occurrence

* Including contractual liability, waiver of subrogation, primary & non- contributory

The required Additional Insured Wording is:

- ***Hovnanian Enterprises Inc., its subsidiaries and affiliated companies as Owner and General Contractor as additional insured.***
- *Attached Additional Insured Endorsement Required: ISO Form CG 2010 11/85, **or its equivalent**, or CG 2026 11/85, **or its equivalent**.*
- *Coverage must be primary and non-contributory above any other insurance Hovnanian Enterprises Inc. may carry.*

Commercial Automobile Liability:

\$500,000	Combined Single Limit
Or	
\$500,000	Bodily Injury per Accident
\$500,000	Bodily Injury per Person
\$500,000	Property Damage

Workers' Compensation:

State Statutory Limits - for ALL vendors

Professional Liability E&O (When applicable):

\$1,000,000 Combined Single Limit

Schedule of Endorsements:

- Schedule of Endorsements for General Liability Policy must be provided.
- General Liability Policy must not contain any residential exclusions.
- Any other exclusion in the Policy may be requested and further reviewed, if necessary.
- Binder copies are unacceptable.

Send all insurance information to:

K. Hovnanian Insurance Compliance
P.O. Box 12010 - KH
Hemet, CA 92546-8010
Phone: 951-766-2244 Fax: 770-325-3325
Email: khov@ebix.com

Contractor Initials: _____ Subcontractor Initials: 

What is required on the Additional Insured Endorsement:

The Endorsement Must:

- Have ongoing operations AND completed operations coverage (if applicable).
- List Hovnanian's Additional Insured Wording:

"Hovnanian Enterprises Inc., its Subsidiaries and Affiliated companies as Owner and General Contractor as Additional Insured."

or

"As per written contract."

- List "All locations" if there is a locations section in the form.
- Make subcontractor's insurance Primary.

EXHIBIT E TO MASTER SUBCONTRACT

Safety Procedures and Project Site Rules and Regulations

The following policies have been instituted and shall be binding on Subcontractor in order to permit Contractor to properly safeguard each Project Site and maintain control over the physical premises, with a view toward eliminating theft, vandalism, avoiding unnecessary Project Site injuries caused by accidents, and alleviating the likelihood of work slowdowns, stoppages and products delays resulting from disruptions. Such procedures, rules and regulations shall apply to each Project Site and are as follows:

1. Safety Precautions. Subcontractor shall take all reasonable safety precautions with respect to the performance of the Work, shall comply with all safety measures initiated by Contractor and shall comply with all applicable Laws with respect to the safety of persons or property, including without limitation all applicable Laws of the Occupational Safety and Health Act, 29 U.S.C. section 651 et seq. ("**OSHA**") as promulgated by The Industrial Commission of Arizona, Arizona Division of Occupational Safety and Health ("**ADOSH**") and any other applicable public authority (collectively, the "**Safety Rules**").

(a) Subcontractor shall protect the materials and the Work from deterioration and damage during construction, shall store and secure flammable material from fire, and shall remove oily rags, waste and refuse from buildings at the end of each work day.

(b) Subcontractor shall maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals and other devices necessary to provide for safety in traffic and on the Project Site.

(c) Subcontractor shall immediately notify Contractor of any accident, death, traumatic injury or occupational disease occurring on the Project Site, and a senior executive of Subcontractor shall visit the Project Site within 24 hours of such an event to review what occurred and to plan steps to prevent further deterioration of safety performance. Subcontractor shall make a complete written report to Contractor of any accident, death, traumatic injury or occupational disease occurring on the Project Site or of any damage to any person, property, materials, supplies or equipment incident to the Work within three (3) days of the date of such injury, or damage, including, without limitation, any injury which may result in an employee of Subcontractor being unable or unfit to work for any period of time.

(d) Subcontractor recognizes that Contractor has the right (but not the obligation) to ascertain whether or not the personnel and equipment of Subcontractor are in compliance with the requirements of ADOSH, any other applicable public authority or the Safety Rules. This right is applicable even when direct employees of Contractor are not involved. Contractor's project superintendent or other personnel shall have the right to examine any equipment brought to the job by Subcontractor or any of its employees, suppliers, sub-subcontractors or agents and to inform Subcontractor of any requirement that Subcontractor's employees, suppliers, sub-subcontractors and agents wear protective equipment or otherwise observe good safety practice. In the event Contractor becomes aware of any violation of the Safety Rules by Subcontractor or any employee, supplier, sub-subcontractor or agent of Subcontractor, Contractor (or its project superintendent or other personnel) shall have the right to provide Subcontractor with a written notice (the "**Safety Notice**") of such failure to comply with the Safety Rules and impose reasonable fines on Subcontractor. Such Safety Notice shall be sent by Contractor to Subcontractor at the address given on the cover page of this Subcontract and to Subcontractor's field representative and the Safety Notice will apprise Subcontractor of a failure to adhere to the Safety Rules. If Subcontractor fails to rectify the applicable violation(s) of the Safety Rules within twenty-four (24) hours of receipt of the Safety Notice, Subcontractor shall be deemed to be in default under this Subcontract. In the event that Subcontractor or Subcontractor's employees, agents, suppliers or sub-subcontractors violate the Safety Rules, then Contractor shall have the right to fine or backcharge Subcontractor \$100.00 per occurrence

(e) Subcontractor also recognizes the obligation of its employees, agents, suppliers, sub-subcontractors, and visitors to comply with common sense and other general safety standards in connection with the Work.

(f) Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its sub-subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the Safety Rules.

(g) Without limiting the generality of Paragraph 15 of this Subcontract, and provided that this Exhibit E, Paragraph 1 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and the public policy of the State, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Subcontract, Subcontractor agrees to at all times indemnify, defend (with legal counsel selected by Contractor in its sole and absolute discretion) and hold harmless the Indemnified Parties, and each of them, from and against any and all Claims caused by Subcontractor's operations performed under this Subcontract or Work which constitute a violation or infraction by Subcontractor of any Safety Rule or other safety requirement described in this Exhibit E, Paragraph 1.

(h) Subcontractor hereby certifies that its employees, agents and sub-subcontractors have received sufficient training, including without limitation any training required under the Safety Rules, and are regularly trained in the recognition and avoidance of potentially hazardous conditions in connection with the Work.

2. Compliance with Environmental, Health and Safety Standards.

(a) Compliance with Hazardous Substances Laws. Subcontractor shall not, in connection with this Subcontract or the Work, use, possess, handle, transport, emit, release or discharge any chemical, material or substance except as permitted by, and in strict compliance with, all applicable Laws, including, without limitation, the Comprehensive Environmental Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1801 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651 et seq.; the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq., and all other applicable State and local Laws (referred to hereafter individually as "**Hazardous Substance Law**" and collectively as "**Hazardous Substances Laws**").

(b) Warnings. Subcontractor shall, at its sole expense, provide any and all notices and warnings required under all Hazardous Substances Laws with respect to any chemicals, materials or substances which Subcontractor, and its employees, suppliers, sub-subcontractors or agents, use, possess, handle, transport, emit, release, or discharge in connection with this Subcontract or the prosecution of any and all contract or non-contract work relating to the Project, including, without limitation, the Work.

(c) Labeling: MSDS Requirements. Contractor and all of its affiliated and subsidiary companies are firmly committed to providing employees, suppliers, subcontractors and agents with information about any hazardous work environment. As a matter of Contractor's company policy to provide its employees and other parties with information about hazardous chemicals on any Project Site through container labeling and Material Safety Data Sheets (MSDS), Subcontractor shall be obligated to compile a list of all hazardous chemicals that will be used on the Project Site by reviewing container labels and MSDS sheets. The list must be updated as necessary and shall be provided to the main office of Contractor. Subcontractor shall maintain a current copy of the list at the Project Site for inspection by Contractor, ADOSH or any other relevant inspector. Each container of materials deemed hazardous under the Hazardous Substances Laws which is used by Subcontractor on the Project Site shall, in addition to being properly labeled under applicable Hazardous Substances Laws, at a minimum list the contents of the container, appropriate hazard warnings and the name and address of the manufacturer, importer, or other responsible parties to the extent not already required under the Hazardous Substances Laws. In addition, Subcontractor shall label all secondary containers in compliance with applicable Hazardous Substances Laws, but, at a minimum, shall label such containers with either an extra copy of the manufacturer's label, or the signed or generic label that lists the container's contents and appropriate hazard warnings. Subcontractor shall also make MSDS sheets readily accessible to employees, suppliers, sub-subcontractors and agents at the Project Site. Training of Subcontractor's employees, suppliers, sub-subcontractors and agents on hazardous chemicals in their work area is solely the responsibility of Subcontractor. It is Subcontractor's sole responsibility to inform its employees, suppliers, sub-subcontractors and agents about hazards to which they may be exposed and the appropriate protective and safety measures they should take. To ensure that the employees of other contractors have access to information on the hazardous chemicals at the Project Site, it is the sole responsibility of Subcontractor to provide to the other suppliers, subcontractors and personnel on the Project Site information regarding where the MSDS sheets are available, the name and location of the hazardous chemicals to which their employees may be exposed and any appropriate protective measures required to minimize their exposure and an explanation of the labeling system used at the Project Site.

(d) Storm Water Pollution Prevention. Subcontractor shall comply with and fully cooperate with all Storm Water Pollution Prevention Plans ("**SWPPP**") adopted with respect to a Project pursuant to the Clean Water Act and all storm water pollution prevention plans and protection plans, orders, measures, actions and best management practices, as may be updated from time to time, instituted by Contractor, the U.S. EPA, and any federal, State, local or regional governmental or quasi-governmental regulatory agencies or water quality boards with competent jurisdiction. A designated representative of Subcontractor shall be in possession of the SWPPP permit approval letter, letter of delegation and plan while working on the job site. Subcontractor shall not alter, tamper with, destroy, or in any way compromise or negatively affect, by Subcontractor's actions or inactions, any Best Management Practices (BMPs) and physical controls in place to prevent and protect against storm water pollution. Subcontractor will follow all BMPs as set forth on the SWPPP plan and make all necessary efforts to maintain the integrity of same (original installation and maintenance by others unless specifically included in the Scope of Work). If during the course of Subcontractor's work temporary removal of any BMP is necessary, Subcontractor shall contact Contractor's authorized representative for approval prior to removal. Subcontractor shall promptly restore such BMP, or shall contact Contractor to restore such BMP. **Contractor may backcharge Subcontractor for any removal, destruction or impairment of BMPs at or in the vicinity of a Project Site by Subcontractor or any of its suppliers, subcontractors or their respective suppliers, employees or subcontractors.**

(e) Dust Control Permits. Subcontractor will comply with all conditions of the dust control permit obtained by Contractor with respect to the Project. Subcontractor will follow all best management practices applicable to Subcontractor's

Contractor Initials: _____ Subcontractor Initials: 


Work as set forth in the permit and all Air Quality Control regulations. A designated representative of Subcontractor will have a copy of the permit in their possession while working on the job site. Dust control measures are included in the Contract Sum. The Subcontractor will be responsible for and shall pay any dust control fines incurred on this job due to work performed by Subcontractor or any of its sub-subcontractors or suppliers or their respective employees, agents or sub-subcontractors.

3. Clean-Up. Subcontractor shall at all times keep the areas of the Project Site free from the accumulation of waste materials, unsafe materials or rubbish arising out of the Work and prevent and protect against storm water pollution, including daily cleanup of all waste and trash generated by Subcontractor during the course of performing the Work. At the end of each work day, Subcontractor shall pile such waste and trash in locations designated by Contractor. Subcontractor shall be obligated to dispose of any material so piled which cannot be disposed of by Contractor in Contractor's ordinary and customary manner. In addition, Subcontractor agrees to remove all trash and waste generated by the Work from the interior of each housing unit on the Project Site in which Subcontractor is performing any part of the Work after completion of the applicable phase of the Work and further agrees to remove all excess materials from each such unit upon completion. Upon completion of the Work, Subcontractor shall remove all of its plans, tools, materials and other articles from the Project Site and any units therein and shall remove from the site all hazardous materials, temporary structures, debris and waste incident to Subcontractor's operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Subcontract. Any such cleanup shall be accomplished in adherence with applicable Hazardous Substances Laws. Any hazardous waste required to be disposed of by Subcontractor will be the property of Subcontractor and Subcontractor hereby accepts liability for any and all costs associated with the handling, transportation and disposal of such waste, including, without limitation, costs associated with the remediation of any sites to which the waste was sent. Contractor may thereafter, at its option and without waiver of such other rights as it may have, upon ten (10) days written or oral notice, treat all such articles as abandoned property. Subcontractor acknowledges that the failure to perform such waste and trash removal obligations as set forth in this Exhibit E, Paragraph 3 shall cause Contractor to incur damages and the parties hereto agree that Contractor shall have the right to backcharge Subcontractor for any cleanup not properly completed by Subcontractor. Additionally, Subcontractor shall be liable to Contractor, and Contractor shall have a right to backcharge Subcontractor for any fines, charges, penalties, costs or expenses charged to Contractor by any federal, State, local or regional governmental or quasi-governmental regulatory agencies or water quality boards with competent jurisdiction, or any other costs or expenses incurred by Contractor directly or indirectly arising out of or related to any of Subcontractor's actions or inactions contributing to any actual or alleged storm water pollution. Subcontractor's obligation to Contractor is to ensure and promote compliance with any SWPPP and to prevent and protect against storm water pollution and is not Contractor's intent impermissibly to transfer liability to a third party in violation of any Laws or regulations by any federal, State, local or regional governmental or quasi-governmental regulatory agencies or water quality boards with competent jurisdiction.

4. Operation of Vehicles. Subject to the insurance requirements of Paragraph 14 of the Subcontract, Subcontractor agrees that the operation of vehicles in or about the Project Site by Subcontractor or the employees, suppliers, sub-subcontractors or agents of Subcontractor (including material delivery vehicles operated by material suppliers of Subcontractor) shall be as follows: (a) using only the designated entries to enter the Project Site, (b) using only established roadways and temporary roadways as authorized by Contractor, (c) no crossing of curbs or sidewalks without prior approval by Contractor and (d) observing a speed limit of 15 miles per hour within the entire Project Site. In the event the vehicles of Subcontractor, Subcontractor's employees, suppliers, sub-subcontractors or agents cause damage to curbs, sidewalks, landscaping or concrete surfaces within the Project Site or cause any other damage to the Project Site, Contractor may effect the repair of such damage and Subcontractor shall be obligated to immediately reimburse Contractor for all actual expenses incurred by Contractor thereby.

5. Parking of Vehicles. It shall be the responsibility of Subcontractor (a) to control the traffic generated by its employees, agents, suppliers, sub-subcontractors (and their employees) on the Project Site under the direction of Contractor's project superintendent; (b) to enforce restrictions against parking on roads within the Project Site; and (c) to provide necessary parking areas for all workers and other personnel in suitable locations as approved by Contractor. In the event Contractor has to tow vehicles owned by Subcontractor, its employees, agents, suppliers or sub-subcontractors (and their employees) to maintain ingress and egress to the Project Site, all such towing charges will be backcharged to Subcontractor. Neither Subcontractor nor Subcontractor's employees, agents, suppliers, sub-subcontractors (or their employees) shall be permitted to park vehicles in driveways, garages or carports of the housing units (whether completed or being constructed) within the Project Site nor shall such vehicles be parked upon sidewalks located within the Project Site. In the event Subcontractor, its employees, agents, suppliers, sub-subcontractors (or their employees) do park vehicles in such restricted areas, Contractor shall have the right to fine or backcharge Subcontractor \$100.00 per vehicle per day and Contractor shall have the right to be reimbursed for any damages resulting to such driveways, garages, carports or sidewalks in cash or in the form of backcharges.

6. Toilet Facilities. Contractor agrees to provide portable toilet facilities within the Project for the use of Subcontractor's employees, agents, suppliers and sub-subcontractors. Subcontractor and its employees, agents, suppliers and sub-subcontractors are not permitted to use the toilet facilities or bathrooms of any housing unit (completed or being constructed) within in the Project Site. In the event that Subcontractor or Subcontractor's employees, agents, suppliers or

Contractor Initials: _____ Subcontractor Initials: 

sub-subcontractors actually use the toilets or bathrooms of such housing units, Contractor shall have the right to fine or backcharge Subcontractor \$100.00 per occurrence.

7. Unacceptable Behavior. Unruly behavior, the drinking of alcoholic beverages, the use of illegal drugs, and/or the playing of loud music by Subcontractor or its employees, agents, suppliers or sub-subcontractors shall not be permitted within the Project. In the event that Subcontractor or Subcontractor's employees, agents, suppliers or sub-subcontractors engage in such activities, Contractor shall have the right to fine or backcharge Subcontractor \$100.00 per occurrence. Contractor shall also have the right to request that the offending party leave the Project Site immediately and Subcontractor agrees to abide by such request. Contractor may require Subcontractor to remove from the Project Site such employees, agents, suppliers or sub-subcontractors as Contractor deems incompetent, careless, insubordinate or otherwise objectionable, or whose continued employment in connection with the Work is deemed by Contractor to be contrary to Contractor's best interests or the public interest.

8. Food and Beverages. Subcontractor and Subcontractor's employees, agents, suppliers and sub-subcontractors shall be responsible for the cleanup of trash generated by any eating and drinking within the Project Site, in the manner described above.

9. Finished Surfaces. Subcontractor acknowledges that none of the finished surfaces such as counter-tops, flooring, tubs, toilet fixtures, etc. contained within or to be contained within each housing unit in the Project Site shall be used by Subcontractor or its employees, agents, suppliers or sub-subcontractors for the placement of tools or for use as a work surface. The placing of tools or using of such finished surfaces as a work surface by Subcontractor or its employees, agents, suppliers or sub-subcontractors shall give Contractor the right to fine or backcharge Subcontractor \$100.00 per occurrence in addition to any costs incurred to repair or replace any damaged finished surfaces. Subcontractor, its employees, agents, suppliers and sub-subcontractors shall be required to (a) protect any finished surfaces which may be affected or damaged by the Work being performed by Subcontractor, and (b) wear booties or other protective covering before entering any residence in which carpeting or other flooring has been installed in order to protect against damage to or soiling of such floor coverings. Contractor shall have the right to fine or backcharge Subcontractor \$250.00 per violation and Contractor shall have the right to be reimbursed for any damages or cleaning charges resulting from Subcontractor's or its employees', agents', suppliers' or sub-subcontractors' failure to comply with such requirement in cash or in the form of backcharges.

10. Pets. Subcontractor agrees that no pets (other than seeing-eye dogs) shall be brought to the Project Site by Subcontractor or its employees, agents, suppliers or sub-subcontractors. In the event any such pets are permitted within the Project Site by Subcontractor or its employees, agents, suppliers or sub-subcontractors, Contractor shall have the right to fine or backcharge Subcontractor \$100.00 per occurrence.

11. Subcontractor Warranties and Representations Regarding Injury and Illness Prevention Program and other Safety Programs. Contractor and all of its parent, affiliated and subsidiary companies are firmly committed to compliance with all requirements of ADOSH, and any other applicable public authority, and all other Safety Rules and requires all subcontractors to commit to a goal of a safe workplace and zero accidents on the Project. Accordingly, Subcontractor represents and warrants that:

- (a) Subcontractor has adopted and implemented, in compliance with the requirements of any applicable public authority, an Injury and Illness Prevention Program. In that connection,
 - (i) Subcontractor has read, understands and will comply with Contractor's Safety Instructions;
 - (ii) Subcontractor has appointed a Safety Program Administrator who has the authority and responsibility to implement the Safety Programs;
 - (iii) Subcontractor has trained its employees, agents, suppliers and sub-subcontractors, and all others who will be on the Project Site under Subcontractor's supervision or at Subcontractor's request in safe and healthy work practices;
 - (iv) Subcontractor will use disciplinary procedures to ensure compliance with such safe and healthy work practices;
 - (v) Subcontractor has established procedures for reporting unsafe conditions and communicating with its employees, agents, suppliers and sub-subcontractors on matters relating to occupational safety and health;
 - (vi) Subcontractor has developed and will conduct a program of inspections to identify and evaluate hazards at the Project Site and elsewhere, as related to the Work;
 - (vii) Subcontractor has established and will implement procedures for correcting unsafe or unhealthy conditions and work practices;

Contractor Initials: _____ Subcontractor Initials: 

(viii) Subcontractor has established and will implement procedures for investigating occupational injuries and illnesses;

(ix) Subcontractor so advises that it will provide a "competent person" as defined by ADOSH as required; and

(x) Prior to the commencement of the Work, Subcontractor will provide Contractor at Contractor's main office with a written health and safety program and a written hazard communication program. Contractor's receipt or non-receipt of such documents shall not constitute approval of same nor relieve Subcontractor of any of its obligations, including, without limitation, obligations regarding the Safety Rules, the Hazardous Substances Laws, or other safety, health or environmental Laws, whether under this Subcontract, the Contract Documents or otherwise. Subcontractor shall maintain a copy of the programs at the Project Site at all times.

(b) Subcontractor has adopted and implemented such safety programs as may be required by Law (collectively, the "**Safety Programs**"). Upon request, Subcontractor shall furnish copies of all of these Safety Programs to Contractor, and shall provide Contractor with written proof that Subcontractor conducts required inspections of the Project Site and equipment and training of its employees, and maintains required records. Contractor's receipt or non-receipt of such documents shall not constitute approval of same nor relieve Subcontractor of any of its obligations, including, without limitation, obligations regarding the Safety Rules or Safety Programs, whether under this Subcontract, the Contract Documents or otherwise. Subcontractor shall maintain a copy of the Safety Programs at the Project Site at all times.

12. Indemnity. Without limiting the generality of Paragraph 15 of this Subcontract, and provided that this Exhibit E, Paragraph 12 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and the public policy of the State, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Subcontract, Subcontractor agrees to at all times indemnify, defend (with legal counsel selected by Contractor in its sole and absolute discretion) and hold harmless the Indemnified Parties, and each of them, from and against any and all Claims caused by any alleged or actual violation of any Hazardous Substances Laws, the Safety Rules and any alleged or actual breach of any warranties or representations made by Subcontractor in connection with (i) this Subcontract or (ii) the prosecution of any and all contract or non-contract work relating to the Project by Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable, regardless of whether such alleged or actual violation is contributed to by an act or omission to act by Contractor, or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, or by Contractor's failure to comply with any Law relating to the subject of this Subcontract or the performance of the Work thereunder. Subcontractor's obligations under this paragraph shall apply with full force and effect regardless of any concurrent negligence, whether active or passive, primary or secondary, by Contractor, by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable. However, notwithstanding any contrary provision, nothing herein shall require Subcontractor to indemnify, hold harmless or defend any Indemnified Party from or against liability for loss or damage resulting from the sole negligence of the Indemnified Party, or the Indemnified Party's agents, employees or indemnitees.

13. No Minors. No Person under the age of 18 is allowed on the Project Site.

EXHIBIT F TO MASTER SUBCONTRACT

Collective Bargaining Agreements

Contractor's Agreements

	<u>Union Name</u>	<u>Union Trust Fund Address</u>	<u>Employer Trust Fund Reporting or Identification Number</u>
1.			
2.			
3.			
4.			

Subcontractor's Agreements

	<u>Union Name</u>	<u>Union Trust Fund Address</u>	<u>Employer Trust Fund Reporting or Identification Number</u>
1.			
2.			
3.			
4.			

EXHIBIT "G"

CUSTOMER SERVICE AGREEMENT

Contractor's commitment to customer satisfaction is a priority and must be maintained. The following items are to be considered material items within this Subcontract and are to be complied with *in addition* to any other references to customer service. All policies, which follow, shall be binding on Subcontractor to insure customer satisfaction. Failure to comply shall be considered a material breach of this Subcontract.

- 1) Notification of the need for warranty work shall be either written or verbal from the Contractor and shall be at the sole discretion of the Contractor's designated representative. All non-emergency warranty work shall be responded to within two (2) business days of notification and shall be completed within two (2) business days after commencement of warranty work unless the work reasonably requires more time than 2 business days to complete, in which case Subcontractor shall work diligently to complete the work in as short a time as possible. Failure to comply within these designated time frames will give rise to contracting with a different subcontractor and backcharging any and all related costs.
- 2) Response time for emergency items shall not exceed four (4) hours. Contractor's designated representative shall have the final decision on classification of emergencies. In addition, all subcontractors for HVAC, electrical or plumbing work shall be required to be reachable by an emergency telephone number on a 24-hour per day, 365 day per year basis. This phone shall be manned, i.e. answering machines are not acceptable. Failure to comply within these designated time frames will give rise to contracting with a different subcontractor and backcharging any and all related costs.
- 3) Subcontractor shall supply (below) a designated phone number and contact person for warranty service work. Subcontractor's agent or owner shall supply his or her name and phone number in addition as backup.
- 4) Subcontractor shall make all employees aware that any statements made to purchasers of a negative nature including but not limited to Contractor's product, or any action or behavior within the Project including but not limited to within a residence may subject Subcontractor to termination. Contractor shall have final decision regarding employee statements and behavior.
- 5) Subcontractor shall be solely responsible for any damage done to a purchaser's residence by Subcontractor. Contractor shall have final say in this matter.
- 6) Subcontractor shall not enter a residence for warranty service with any type of footwear other than bare socks or booties without express permission of the purchaser. This permission may be requested only when the safety of the Subcontractor's employees may be at risk.
- 7) Subcontractor is responsible for after repair clean up. Subcontractor must use drop cloths where appropriate and take every precaution to protect the personal property of the resident. Residences must be left in an as clean or cleaner condition than when found.
- 8) Subcontractor must maintain adequate staffing levels to provide timely service while meeting all production schedules.
- 9) Failure of subcontractor to appear for a scheduled appointment with purchaser shall give rise to a \$250.00 backcharge payable to purchaser.
- 10) Subcontractor agrees that it will perform purchase order ("PO") work at other K. Hovnanian Homes projects if a similar subcontractor fails to perform warranty or PO work at that site. Subcontractor shall be paid by PO for performing such work.
- 11) All remedies under this Subcontract shall remain in force. Contractor's designated representatives shall maintain a logbook of any deficiencies. Failure to comply with any item provided in this EXHIBIT G may be considered a material breach and default of the Master Subcontract.
- 12) Subcontractor acknowledges that it is Contractor's policy not to pay any invoices for warranty work that are received by Contractor more than ninety (90) days after Subcontractor's receipt of the request for such warranty

Contractor Initials: _____ Subcontractor Initials: 

work. Furthermore, Subcontractor acknowledges that all invoices for warranty work must be accompanied by the applicable service ticket. As such, Subcontractor acknowledges and agrees that Subcontractor shall not receive payment in connection with any invoices for warranty work that are delivered more than ninety (90) days after Subcontractor's receipt of the request for such warranty work, or for invoices that are not accompanied by the applicable service ticket.

Customer Service Phone # 602.867.9386

24-Hour Emergency # 602.842.2842

Agent or Owner # 602.867.9386

As to Subcontractor:

Signature:  _____

Printed Name: Eric Lahti

Title: Controller

Date: 6/24/2016

As to K. Hovnanian Great Western Building Company, LLC:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

As to K. Hovnanian Building Company, LLC:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Contractor Initials: _____ Subcontractor Initials: 