

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

KB HOME Orlando LLC, a Delaware
limited liability company,

Plaintiff,

vs.

Case No.

BUILDERS FIRSTSOURCE – FLORIDA, LLC,
JCI PAINTING CORP., PREMIER PLASTERING OF
CENTRAL FLORIDA, INC., RAM ENTERPRISES
OF ORLANDO, INC. and SUPERB ROOFING, INC.,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, KB HOME Orlando LLC, hereby sues BUILDERS FIRSTSOURCE-FLORIDA, LLC, JCI PAINTING CORP., PREMIER PLASTERING OF CENTRAL FLORIDA, INC., RAM ENTERPRISES OF ORLANDO, INC. and SUPERB ROOFING, INC., and for its Complaint, alleges:

The Parties, Jurisdiction and Venue

1. Each cause of action set forth herein is an action for damages in excess of \$15,000.00, exclusive of interest, costs, and attorneys' fees.
2. KB HOME Orlando LLC ("KB HOME") is a Delaware limited liability company authorized to transact and transacting business in the State of Florida.
3. Upon information and belief, Defendant BUILDERS FIRSTSOURCE-FLORIDA, LLC ("Builders FirstSource") is a Delaware limited liability, who at times material to this Complaint engaged in commercial activity in Orange County, Florida and/or performed services relating to the construction of certain single-family homes within the Emerald Ridge residential community located in Winter Garden, Orange County, Florida (such homes being

referred to herein as the “Project”). KB HOME and Builders FirstSource entered into master subcontract for the construction of, among other things, the Project or a portion of the Project. A copy of the master subcontract is attached hereto as **Composite Exhibit A**.

4. Upon information and belief, Defendant JCI PAINTING CORP. (“JCI Painting”), is a Florida corporation, who at times material to this Complaint engaged in commercial activity in Orange County, Florida and/or performed services relating to the Project. KB HOME and JCI Painting entered into master subcontract for the construction of, among other things, the Project or a portion of the Project. At this time, KB HOME is not in possession of this master subcontract, but its material terms are, upon information and belief, substantially identical to the other master subcontracts attached to the Complaint.

5. Upon information and belief, Defendant PREMIER PLASTERING OF CENTRAL FLORIDA, INC. (“Premier Plastering”), is a Florida corporation, who at times material to this Complaint engaged in commercial activity in Orange County, Florida and/or performed services relating to the Project. KB HOME and Premier Plastering entered into master subcontract for the construction of, among other things, the Project or a portion of the Project. At this time, KB HOME is not in possession of this master subcontract, but its material terms are, upon information and belief, substantially identical to the other master subcontracts attached to the Complaint.

6. Upon information and belief, Defendant RAM ENTERPRISES OF ORLANDO, INC. (“Ram Enterprises”), is a Florida corporation, who at times material to this Complaint engaged in commercial activity in Orange County, Florida and/or performed services relating to the Project. KB HOME and Ram Enterprises entered into master subcontract for the construction of, among other things, the Project or a portion of the Project. At this time, KB

HOME is not in possession of this master subcontract, but its material terms are, upon information and belief, substantially identical to the other master subcontracts attached to the Complaint.

7. Upon information and belief, Defendant SUPERB ROOFING, INC. (“Superb Roofing”), is a Florida corporation, who at times material to this Complaint engaged in commercial activity in Orange County, Florida and/or performed services relating to the Project. KB HOME and Superb Roofing entered into master subcontract for the construction of, among other things, the Project or a portion of the Project. At this time, KB HOME is not in possession of this master subcontract, but its material terms are, upon information and belief, substantially identical to the other master subcontracts attached to the Complaint.

8. The subcontractors identified in paragraphs 3 through 7 are collectively referred to as the “Subcontractors.”

9. The Project is located in Orange County, Florida, and each cause of action alleged in this Complaint accrued in Orange County, Florida.

10. All conditions precedent to bringing this action have been performed, excused, waived, or have otherwise occurred.

General Allegations

11. KB HOME was the general contractor for the Project.

12. KB HOME contracted with the Subcontractors to perform work necessary to construct numerous homes in the Project.

13. Following completion of the Project, numerous homeowners made claims against KB HOME for water intrusion and other damages to their homes caused by construction defects

and deficiencies. Attached hereto as **Exhibit B** is a list of the Defects known to date (the “Defects”).

14. The Subcontractors’ work resulting in the Defects fell below acceptable standards of practice in the construction industry; failed to comply with the contract documents and applicable building codes; and caused property damage to other building components and materials and damage to other property.

15. KB HOME notified the Subcontractors of the homeowners’ claims and tendered its defense. KB HOME’s tenders were not accepted by the Subcontractors.

16. The existence and/or cause of the Defects are technical and not readily recognizable by persons who lack special knowledge or training, and/or were latent and remained undiscovered for a period of time following the final completion of construction.

17. As a result of the Defects, KB HOME has been required to incur significant damages to investigate, repair and remediate the Project, and to resolve claims with the individual homeowners. The costs and damages are continuing in nature.

18. Furthermore, the Defects have caused KB HOME to suffer special damages, including damage to KB HOME’s goodwill and business reputation.

19. KB HOME hired the undersigned law firm to represent it in the matter and is obligated to pay reasonable fees for the firm’s services.

Count One
BUILDERS FIRSTSOURCE
Breach of Contract

20. KB HOME realleges and incorporates by reference paragraphs 1 through 3 and 8 through 19, as if fully set forth herein.

21. Builders FirstSource warranted to KB HOME, among other things, that its work was performed in a good and workmanlike manner, and that the Project's homes and improvements were constructed in accordance with the plans and specifications, all applicable building codes, and good construction practices.

22. Builders FirstSource also warranted and represented to KB HOME that, among other things:

- a. All of its work would be of the finest quality, free from faults and defects of design, materials and workmanship;
- b. All materials would be new and of the most suitable grade for their respective kinds for their intended purposes;
- c. Builders FirstSource would only hire employees who were sufficiently skilled to perform the work in a professional manner, the end product of which would be satisfactory to KB HOME and its customers;
- d. The finished product would be suitable for its intended use;
- e. Builders FirstSource would not cover over, hide or fail to disclose to KB HOME any shoddy, incomplete, inadequate, nonconforming or otherwise inferior work; and
- f. Builders FirstSource would indemnify, defend and hold harmless KB HOME from any and all claims arising out of the master subcontract.

23. By reason of the allegations in paragraphs 13 through 15, as well as Builders FirstSource's refusal to defend and indemnify KB HOME, Builders FirstSource has materially breached its master subcontract with KB HOME.

24. As a result, KB HOME has suffered damages, including but not limited to its costs of defense, its costs to investigate, and its cost to resolve claims of homeowners.

25. As a result of Builders FirstSource's material breach of its master subcontract, it was necessary for KB HOME to retain the undersigned attorneys to file this action, for which KB HOME will incur costs, attorneys' fees, as well as other expenses. Builders FirstSource is obligated to pay these costs and attorneys' fees under the terms of the master subcontract.

WHEREFORE, KB HOME demands judgment against Builders FirstSource for its damages, pre and post judgment interest, its attorneys' fees and costs, and such other relief as this Court finds just and equitable.

Count Two
BUILDERS FIRSTSOURCE
Negligence

26. KB HOME realleges and incorporates by reference paragraphs 1 through 3 and 8 through 19, as if fully set forth herein.

27. Builders FirstSource had a duty to: (i) perform its work in a reasonably prudent manner consistent with all applicable industry codes, industry practices and standards; (ii) supervise and coordinate the work of its employees, sub-subcontractors and suppliers so that the work, when completed, complied with all applicable codes, industry practices, and standards; (iii) provide building materials that were fit for their intended purposes; and (iv) perform the work in a good and workmanlike manner.

28. By reason of the allegations in paragraphs 13 through 15, Builders FirstSource breached these duties.

29. As a direct and proximate result of these breaches, KB HOME has been damaged.

WHEREFORE, KB HOME demands judgment against Builders FirstSource for its damages, pre and post judgment interest, its costs, and such other relief as this Court finds just and equitable.

Count Three
BUILDERS FIRSTSOURCE
Common Law Indemnity

30. KB HOME realleges and incorporates by reference paragraphs 1 through 3 and 8 through 19, as if fully set forth herein.

31. This is an action by KB HOME for common law indemnity against Builders FirstSource, who, by reason of the allegations in paragraphs 13 through 15, performed defective work at the Project resulting in the Defects.

32. KB HOME is entirely without fault for Builders FirstSource's defective and deficient work.

33. Because KB HOME, through no fault of its own, is vicariously, constructively, derivatively, or technically responsible, and, unlike Builders FirstSource, has already taken responsibility for Builders FirstSource's defective work, a special relationship exists between KB HOME and Builders FirstSource pursuant to which KB HOME has the right to be indemnified for all damages sustained as a result, including all attorneys' fees and costs incurred in connection with this lawsuit.

WHEREFORE, KB HOME demands judgment against Builders FirstSource for its damages, attorneys' fees, pre and post judgment interest, its costs, and such other relief as this Court finds just and equitable.

Count Four
BUILDERS FIRSTSOURCE
Statutory Cause of Action Pursuant to Fla. Stat. § 553.84

34. KB HOME realleges and incorporates by reference paragraphs 1 through 3 and 8 through 19, as if fully set forth herein.

35. This is an action for damages arising from building code violations pursuant to Fla. Stat. § 553.84.

36. Builders FirstSource was obligated to perform its work in accordance with all laws, rules, codes and standards adopted by Chapter 553, Florida Statutes (hereinafter "Chapter 553").

37. By reason of the allegations in paragraphs 11 through 18, Builders FirstSource breached its obligation to perform its work in accordance with Chapter 553.

38. Builders FirstSource was contractually obligated to ascertain the applicability to and conformance of its work with Chapter 553; therefore, Builders FirstSource knew or should have known that its work was in violation of Chapter 553.

39. As a result of the previously alleged violations of Chapter 553, KB HOME has been and will be required to spend money for the repair of the Defects and has incurred additional damages caused thereby, including damage to other property, out of pocket expenses to investigate the Defects, and attorneys' fees.

WHEREFORE, KB HOME demands judgment against Builders FirstSource for its damages, pre and post judgment interest, its attorneys' fees and costs, and such other relief as this Court finds just and equitable.

Count Five
JCI PAINTING
Breach of Contract

41. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 4 and 8 through 19, as if fully set forth herein.

42. JCI Painting warranted to KB HOME, among other things, that its work was performed in a good and workmanlike manner, and that the Project's homes and improvements were constructed in accordance with the plans and specifications, all applicable building codes, and good construction practices.

43. JCI Painting also warranted and represented to KB HOME that, among other things:

- a. All of its work would be of the finest quality, free from faults and defects of design, materials and workmanship;
- b. All materials would be new and of the most suitable grade for their respective kinds for their intended purposes;
- c. JCI Painting would only hire employees who were sufficiently skilled to perform the work in a professional manner, the end product of which would be satisfactory to KB HOME and its customers;
- d. The finished product would be suitable for its intended use;
- e. JCI Painting would not cover over, hide or fail to disclose to KB HOME any shoddy, incomplete, inadequate, nonconforming or otherwise inferior work; and
- f. JCI Painting would indemnify, defend and hold harmless KB HOME from any and all claims arising out of the master subcontract.

44. By reason of the allegations in paragraphs 13 through 15, as well as JCI Painting's refusal to defend and indemnify KB HOME, JCI Painting has materially breached its master subcontract with KB HOME.

45. As a result, KB HOME has suffered damages, including but not limited to its costs of defense, its costs to investigate, and its cost to resolve claims of homeowners.

46. As a result of JCI Painting's material breach of its master subcontract, it was necessary for KB HOME to retain the undersigned attorneys to file this action, for which KB HOME will incur costs, attorneys' fees, as well as other expenses. JCI Painting is obligated to pay these costs and attorneys' fees under the terms of the master subcontract.

WHEREFORE, KB HOME demands judgment against JCI Painting for its damages, pre and post judgment interest, its attorneys' fees and costs, and such other relief as this Court finds just and equitable.

Count Six
JCI PAINTING
Negligence

47. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 4 and 8 through 19, as if fully set forth herein.

48. JCI Painting had a duty to: (i) perform its work in a reasonably prudent manner consistent with all applicable industry codes, industry practices and standards; (ii) supervise and coordinate the work of its employees, sub-subcontractors and suppliers so that the work, when completed, complied with all applicable codes, industry practices, and standards; (iii) provide building materials that were fit for their intended purposes; and (iv) perform the work in a good and workmanlike manner.

49. By reason of the allegations in paragraphs 13 through 15, JCI Painting breached these duties.

50. As a direct and proximate result of these breaches, KB HOME has been damaged.

WHEREFORE, KB HOME demands judgment against JCI Painting for its damages, pre and post judgment interest, its costs, and such other relief as this Court finds just and equitable.

Count Seven
JCI PAINTING
Common Law Indemnity

51. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 4 and 8 through 19, as if fully set forth herein.

52. This is an action by KB HOME for common law indemnity against JCI Painting, who, by reason of the allegations in paragraphs 13 through 15, performed defective work at the Project resulting in the Defects.

53. KB HOME is entirely without fault for JCI Painting's defective and deficient work.

54. Because KB HOME, through no fault of its own, is vicariously, constructively, derivatively, or technically responsible, and, unlike JCI Painting, has already taken responsibility for JCI Painting's defective work, a special relationship exists between KB HOME and JCI Painting pursuant to which KB HOME has the right to be indemnified for all damages sustained as a result, including all attorneys' fees and costs incurred in connection with this lawsuit.

WHEREFORE, KB HOME demands judgment against JCI Painting for its damages, attorneys' fees, pre and post judgment interest, its costs, and such other relief as this Court finds just and equitable.

Count Eight
JCI PAINTING
Statutory Cause of Action Pursuant to Fla. Stat. § 553.84

55. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 4 and 8 through 19, as if fully set forth herein.

56. This is an action for damages arising from building code violations pursuant to Chapter 553.

57. JCI Painting was obligated to perform its work in accordance with all laws, rules, codes and standards adopted by Chapter 553.

58. By reason of the allegations in paragraphs 11 through 18, JCI Painting breached its obligation to perform its work in accordance with Chapter 553.

59. JCI Painting was contractually obligated to ascertain the applicability to and conformance of its work with Chapter 553; therefore, JCI Painting knew or should have known that its work was in violation of Chapter 553.

60. As a result of the previously alleged violations of Chapter 553, KB HOME has been and will be required to spend money for the repair of the Defects and has incurred additional damages caused thereby, including damage to other property, out of pocket expenses to investigate the Defects, and attorneys' fees.

WHEREFORE, KB HOME demands judgment against JCI Painting for its damages, pre and post judgment interest, its attorneys' fees and costs, and such other relief as this Court finds just and equitable.

Count Nine
PREMIER PLASTERING
Breach of Contract

61. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 5 and 8 through 19, as if fully set forth herein.

62. Premier Plastering warranted to KB HOME, among other things, that its work was performed in a good and workmanlike manner, and that the Project's homes and improvements were constructed in accordance with the plans and specifications, all applicable building codes, and good construction practices.

63. Premier Plastering also warranted and represented to KB HOME that, among other things:

- a. All of its work would be of the finest quality, free from faults and defects of design, materials and workmanship;
- b. All materials would be new and of the most suitable grade for their respective kinds for their intended purposes;
- c. Premier Plastering would only hire employees who were sufficiently skilled to perform the work in a professional manner, the end product of which would be satisfactory to KB HOME and its customers;
- d. The finished product would be suitable for its intended use;
- e. Premier Plastering would not cover over, hide or fail to disclose to KB HOME any shoddy, incomplete, inadequate, nonconforming or otherwise inferior work; and
- f. Premier Plastering would indemnify, defend and hold harmless KB HOME from any and all claims arising out of the master subcontract.

64. By reason of the allegations in paragraphs 13 through 15, as well as Premier Plastering's refusal to defend and indemnify KB HOME, Premier Plastering has materially breached its master subcontract with KB HOME.

65. As a result, KB HOME has suffered damages, including but not limited to its costs of defense, its costs to investigate, and its cost to resolve claims of homeowners.

66. As a result of Premier Plastering's material breach of its master subcontract, it was necessary for KB HOME to retain the undersigned attorneys to file this action, for which KB HOME will incur costs, attorneys' fees, as well as other expenses. Premier Plastering is obligated to pay these costs and attorneys' fees under the terms of the master subcontract.

WHEREFORE, KB HOME demands judgment against Premier Plastering for its damages, pre and post judgment interest, its attorneys' fees and costs, and such other relief as this Court finds just and equitable.

Count Ten
PREMIER PLASTERING
Negligence

87. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 5 and 8 through 19, as if fully set forth herein.

88. Premier Plastering had a duty to: (i) perform its work in a reasonably prudent manner consistent with all applicable industry codes, industry practices and standards; (ii) supervise and coordinate the work of its employees, sub-subcontractors and suppliers so that the work, when completed, complied with all applicable codes, industry practices, and standards; (iii) provide building materials that were fit for their intended purposes; and (iv) perform the work in a good and workmanlike manner.

89. By reason of the allegations in paragraphs 13 through 15, Premier Plastering breached these duties.

90. As a direct and proximate result of these breaches, KB HOME has been damaged.

WHEREFORE, KB HOME demands judgment against Premier Plastering for its damages, pre and post judgment interest, its costs, and such other relief as this Court finds just and equitable.

Count Eleven
PREMIER PLASTERING
Common Law Indemnity

91. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 5 and 8 through 19, as if fully set forth herein.

92. This is an action by KB HOME for common law indemnity against Premier Plastering, who, by reason of the allegations in paragraphs 13 through 15, performed defective work at the Project resulting in the Defects.

93. KB HOME is entirely without fault for Premier Plastering's defective and deficient work.

94. Because KB HOME, through no fault of its own, is vicariously, constructively, derivatively, or technically responsible, and, unlike Premier Plastering, has already taken responsibility for Premier Plastering's defective work, a special relationship exists between KB HOME and Premier Plastering pursuant to which KB HOME has the right to be indemnified for all damages sustained as a result, including all attorneys' fees and costs incurred in connection with this lawsuit.

WHEREFORE, KB HOME demands judgment against Premier Plastering for its damages, attorneys' fees, pre and post judgment interest, its costs, and such other relief as this Court finds just and equitable.

Count Twelve
PREMIER PLASTERING
Statutory Cause of Action Pursuant to Fla. Stat. § 553.84

95. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 5 and 8 through 19, as if fully set forth herein.

96. This is an action for damages arising from building code violations pursuant to Chapter 553.

97. Premier Plastering was obligated to perform its work in accordance with all laws, rules, codes and standards adopted by Chapter 553.

98. By reason of the allegations in paragraphs 11 through 18, Premier Plastering breached its obligation to perform its work in accordance with Chapter 553.

99. Premier Plastering was contractually obligated to ascertain the applicability to and conformance of its work with Chapter 553; therefore, Premier Plastering knew or should have known that its work was in violation of Chapter 553.

100. As a result of the previously alleged violations of Chapter 553, KB HOME has been and will be required to spend money for the repair of the Defects and has incurred additional damages caused thereby, including damage to other property, out of pocket expenses to investigate the Defects, and attorneys' fees.

WHEREFORE, KB HOME demands judgment against Premier Plastering for its damages, pre and post judgment interest, its attorneys' fees and costs, and such other relief as this Court finds just and equitable.

Count Thirteen
RAM ENTERPRISES
Breach of Contract

101. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 6 and 8 through 19, as if fully set forth herein.

102. Ram Enterprises warranted to KB HOME, among other things, that its work was performed in a good and workmanlike manner, and that the Project's homes and improvements were constructed in accordance with the plans and specifications, all applicable building codes, and good construction practices.

103. Ram Enterprises also warranted and represented to KB HOME that, among other things:

- a. All of its work would be of the finest quality, free from faults and defects of design, materials and workmanship;
- b. All materials would be new and of the most suitable grade for their respective kinds for their intended purposes;
- c. Ram Enterprises would only hire employees who were sufficiently skilled to perform the work in a professional manner, the end product of which would be satisfactory to KB HOME and its customers;
- d. The finished product would be suitable for its intended use;
- e. Ram Enterprises would not cover over, hide or fail to disclose to KB HOME any shoddy, incomplete, inadequate, nonconforming or otherwise inferior work; and
- f. Ram Enterprises would indemnify, defend and hold harmless KB HOME from any and all claims arising out of the master subcontract.

104. By reason of the allegations in paragraphs 13 through 15, as well as Ram Enterprises' refusal to defend and indemnify KB HOME, Ram Enterprises has materially breached its master subcontract with KB HOME.

105. As a result, KB HOME has suffered damages, including but not limited to its costs of defense, its costs to investigate, and its cost to resolve claims of homeowners.

106. As a result of Ram Enterprises' material breach of its master subcontract, it was necessary for KB HOME to retain the undersigned attorneys to file this action, for which KB HOME will incur costs, attorneys' fees, as well as other expenses. Ram Enterprises is obligated to pay these costs and attorneys' fees under the terms of the master subcontract.

WHEREFORE, KB HOME demands judgment against Ram Enterprises for its damages, pre and post judgment interest, its attorneys' fees and costs, and such other relief as this Court finds just and equitable.

Count Fourteen
RAM ENTERPRISES
Negligence

107. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 6 and 8 through 19, as if fully set forth herein.

108. Ram Enterprises had a duty to: (i) perform its work in a reasonably prudent manner consistent with all applicable industry codes, industry practices and standards; (ii) supervise and coordinate the work of its employees, sub-subcontractors and suppliers so that the work, when completed, complied with all applicable codes, industry practices, and standards; (iii) provide building materials that were fit for their intended purposes; and (iv) perform the work in a good and workmanlike manner.

109. By reason of the allegations in paragraphs 13 through 15, Ram Enterprises breached these duties.

110. As a direct and proximate result of these breaches, KB HOME has been damaged.

WHEREFORE, KB HOME demands judgment against Ram Enterprises for its damages, pre and post judgment interest, its costs, and such other relief as this Court finds just and equitable.

Count Fifteen
RAM ENTERPRISES
Common Law Indemnity

111. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 6 and 8 through 19, as if fully set forth herein.

112. This is an action by KB HOME for common law indemnity against Ram Enterprises, who, by reason of the allegations in paragraphs 13 through 15, performed defective work at the Project resulting in the Defects.

113. KB HOME is entirely without fault for Ram Enterprises' defective and deficient work.

114. Because KB HOME, through no fault of its own, is vicariously, constructively, derivatively, or technically responsible, and, unlike Ram Enterprises, has already taken responsibility for Ram Enterprises' defective work, a special relationship exists between KB HOME and Ram Enterprises pursuant to which KB HOME has the right to be indemnified for all damages sustained as a result, including all attorneys' fees and costs incurred in connection with this lawsuit.

WHEREFORE, KB HOME demands judgment against Ram Enterprises for its damages, attorneys' fees, pre and post judgment interest, its costs, and such other relief as this Court finds just and equitable.

Count Sixteen
RAM ENTERPRISES
Statutory Cause of Action Pursuant to Fla. Stat. § 553.84

115. KB HOME realleges and incorporates by reference paragraphs 1 through 2, 6 and 8 through 19, as if fully set forth herein.

116. This is an action for damages arising from building code violations pursuant to Chapter 553.

117. Ram Enterprises was obligated to perform its work in accordance with all laws, rules, codes and standards adopted by Chapter 553.

118. By reason of the allegations in paragraphs 11 through 18, Ram Enterprises breached its obligation to perform its work in accordance with Chapter 553.

119. Ram Enterprises was contractually obligated to ascertain the applicability to and conformance of its work with Chapter 553; therefore, Ram Enterprises knew or should have known that its work was in violation of Chapter 553.

120. As a result of the previously alleged violations of Chapter 553, KB HOME has been and will be required to spend money for the repair of the Defects and has incurred additional damages caused thereby, including damage to other property, out of pocket expenses to investigate the Defects, and attorneys' fees.

WHEREFORE, KB HOME demands judgment against Ram Enterprises for its damages, pre and post judgment interest, its attorneys' fees and costs, and such other relief as this Court finds just and equitable.

Count Seventeen
SUPERB ROOFING
Breach of Contract

121. KB HOME realleges and incorporates by reference paragraphs 1 through 2, and 7 through 19, as if fully set forth herein.

122. Superb Roofing warranted to KB HOME, among other things, that its work was performed in a good and workmanlike manner, and that the Project's homes and improvements were constructed in accordance with the plans and specifications, all applicable building codes and good construction practices.

123. Superb Roofing also warranted and represented to KB HOME that, among other things:

- a. All of its work would be of the finest quality, free from faults and defects of design, materials and workmanship;
- b. All materials would be new and of the most suitable grade for their respective kinds for their intended purposes;
- c. Superb Roofing would only hire employees who were sufficiently skilled to perform the work in a professional manner, the end product of which would be satisfactory to KB HOME and its customers;
- d. The finished product would be suitable for its intended use;
- e. Superb Roofing would not cover over, hide or fail to disclose to KB HOME any shoddy, incomplete, inadequate, nonconforming or otherwise inferior work; and
- f. Superb Roofing would indemnify, defend and hold harmless KB HOME from any and all claims arising out of the master subcontract.

124. By reason of the allegations in paragraphs 13 and 15 above as well as Superb Roofing's refusal to defend and indemnify KB HOME, Superb Roofing has materially breached its master subcontract with KB HOME.

125. As a result, KB HOME has suffered damages, including but not limited to its costs of defense, its costs to investigate and its costs to resolve the claims of the homeowners.

126. As a result of Superb Roofing's material breach of its master subcontract, it was necessary for KB HOME to retain the undersigned attorneys to file this action, for which KB HOME will incur costs, attorneys' fees, as well as other expenses. Superb Roofing is obligated to pay these costs and attorneys' fees under the terms of the master subcontract.

WHEREFORE, KB HOME demands judgment against Superb Roofing for its damages, pre and post judgment interest, its attorneys' fees and costs, and such other relief as this Court finds just and equitable.

Count Eighteen
SUPERB ROOFING
Negligence

127. KB HOME realleges and incorporates by reference paragraphs 1 through 2, and 7 through 19, as if fully set forth herein.

128. Superb Roofing had a duty to (i) perform its work in a reasonably prudent manner consistent with all applicable industry codes, industry practices and standards; (ii) supervise and coordinate the work of its employees, sub-subcontractors and suppliers so that the work, when completed, complied with all applicable codes, industry practices and standards; (iii) provide building materials that were fit for their intended purposes; and (iv) perform the work in a good and workmanlike manner.

129. By reason of the allegations in paragraphs 13 through 15, Superb Roofing breached these duties.

130. As a direct and proximate result of these breaches, KB HOME has been damaged.

WHEREFORE, KB HOME demands judgment against Superb Roofing for its damages, pre and post judgment interest, its costs, and such other relief as this Court finds just and equitable.

Count Nineteen
SUPERB ROOFING
Common Law Indemnity

131. KB HOME realleges and incorporates by reference paragraphs 1 through 2 and 7 through 19, as if fully set forth herein.

132. This is an action by KB HOME for common law indemnity against Superb Roofing.

133. KB HOME is entirely without fault for Defects caused by Superb Roofing.

134. Because KB HOME, through no fault of its own, is vicariously, constructively, derivatively, or technically responsible, and unlike Superb Roofing has already taken responsibility for Superb Roofing's work, a special relationship exists between KB HOME and Superb Roofing pursuant to which KB HOME has the right to be indemnified for all damages sustained as a result, including all attorneys' fees and costs incurred in connection with this lawsuit.

WHEREFORE, KB HOME demands judgment against Superb Roofing for its damages, attorneys' fees, pre and post judgment interest, its costs, and such other relief as this Court finds just and equitable.

Count Twenty
SUPERB ROOFING
Statutory Cause of Action Pursuant to Section 553.84

135. KB HOME realleges and incorporates by reference paragraphs 1 through 2 and 7 through 19, as if fully set forth herein.

136. This is an action pursuant to Chapter 553.

137. Superb Roofing was obligated to perform its work in accordance with Chapter 553.

138. By reason of the allegations in paragraphs 11 through 18, Superb Roofing breached its obligation to perform its work in accordance with Chapter 553.

139. The terms of Superb Roofing's subcontract dictated that Superb Roofing was obligated to ascertain the applicability to and conformance of its work with Chapter 553; therefore, Superb Roofing knew or should have known that its work was in violation of Chapter 553.

140. As a result of the above violations of Chapter 553, KB HOME has been and will be required to spend money for the repair of the Defects and has incurred additional damages caused thereby including damage to other property, out of pocket expenses to investigate the Defects and attorneys' fees.

WHEREFORE, KB HOME demands judgment against Superb Roofing for its damages, pre and post judgment interest, its attorneys' fees and costs, and such other relief as this Court finds just and equitable.

DEMAND FOR JURY TRIAL

KB HOME hereby demands a trial by jury on all issues so triable.

/s/ J. Derek Kantaskas

Erin E. Banks

Florida Bar No. 750301

J. Derek Kantaskas

Florida Bar No. 0041243

CARLTON FIELDS JORDEN BURT, P.A.

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SUBCONTRACT

KB HOME ORLANDO LLC

and

Builders First Source.



EXHIBIT A

License No. _____

Date _____

TABLE OF CONTENTS

	<u>Page</u>
1. Work.....	1
2. Contract Sum.....	1
3. Progress Payments.....	1
4. Payment of Retained Percentage	2
5. Maximum Payments	2
6. Payment Use Verification; Waiver of Claims	3
7. Liens; Payment Failures by Subcontractor.....	3
8. Materials and Work Furnished by Others	3
9. Lien Indemnification.....	3
10. Examination of Documents; Representations of Subcontractor.....	3
11. Propriety Nature of Plans.....	4
12. No Assignment	4
13. Insurance.....	4
14. Indemnification.....	6
15. Taxes and Tariffs	7
16. Changes in the Work	7
17. Materials and Workmanship; Inspection and Testing	7
18. Warranty; Customer Service.....	8
19. Time and Schedule of Work.....	8
20. Protection of Work of Others.....	9
21. Laws	9
22. Bankruptcy.....	10
23. Patents	10
24. Subcontract Termination; Withholding Payments.....	10
25. Backcharges	11
26. Breach of Contract is Breach of All	11
27. Other Contracts	11
28. Protection of Materials	11
29. Communications	11
30. Independent Contractor	11
31. Labor Relations.....	12
32. Service of Process.....	13
33. Contract Interpretation	13

Exhibits

Exhibit A -- Scope of Work

Exhibit B -- Pricing

Exhibit C-1 -- Conditional Waiver and Release Upon Progress Payment

Exhibit C-2 -- Unconditional Waiver and Release Upon Progress Payment

Exhibit C-3 -- Conditional Waiver and Release Upon Final Payment

Exhibit C-4 -- Unconditional Waiver and Release Upon Final Payment

Exhibit D -- Safety Procedures; Project Site Rules and Regulations

Exhibit E -- Collective Bargaining Agreements

Builders FirstSource-Atlantic Group, Inc. is a full-service wholesaler of building materials, with nine distribution centers and three manufacturing plants operating in the Mid-Atlantic and Southeast United States.

FEDERAL ID NO: 52-2080519

OFFICERS:

John D. Roach	Chairman and Chief Executive Officer
Donald F. McAleenan	Senior Vice President, General Counsel and Secretary
Kevin P. O'Meara	Senior Vice President, Chief Financial Officer and Assistant Secretary
Douglas Schweinhart	President
Bradley A. Maunz	Vice President-Finance
Elizabeth G. Boddicker	Assistant Secretary
Deborah L. Dickinson	Assistant Secretary

WHOLESALE SALES TAX CERTIFICATE NOS:

State	Certificate#	Eff. Date	State	Certificate #	Eff. Date
MD	08858210	03/23/98	FL	58-00-165270-80-2	03/23/98
VA	0018168472(in VA)	03/23/98	NJ	522-080-519/000	03/23/98
	0018168499(outside VA)	03/23/98	DE	1-522080519-001	03/23/98
DC	0234679	03/23/98	GA	300240456	03/23/98
PA	80929264	03/23/98	TN	102917097	08/99
WV	52-208-0519-001	03/23/98	MS	083-33002-7	8/99
NC	600155747	03/23/98	AR	215540-76-001	8/99
SC	09922622-4	03/23/98			

INSURANCE CARRIER/POLICY #:

Worker's Compensation	Liberty Mutual	WC2-651-004212-019
General Liability	Liberty Mutual	RG2-651-004212-039
Auto Liability	Liberty Mutual	AS2-651-004212-029

BANK REFERENCE:

Mr. Pete Griffith
NationsBank
100 North Tryon St.
NC1-007-13-06
Charlotte, NC 28255
(704) 386-7104

TRADE REFERENCES:

Builders' Mart of America
P.O. Box 47
Greenville, SC 29602-0047
(800) 569-4262
Fax: (864) 281-3367

Seaboard International
P.O. Box 6059
Nashua, NH 03063-6059
(603) 881-3700
Fax: (603) 598-2281

W VA Moulding & Millwork Co.
Attn: Bob—Credit
Rt. 4, Box 427
Martinsburg, WV 25401
(800) 877-1797
Fax: (304) 267-5597

Patriot Manufacturing Inc.
P.O. Box 498
Hammonton, NJ 08037
(800) 220-2021
Fax: (888) 707-2874

Windsor Windows
900 S. 19th Street
West Des Moines, IA 50265
(704) 283-7459
Fax: (704) 289-5131

KB HOME ORLANDO LLC
SUBCONTRACT

SUBCONTRACT NUMBER: _____

THIS SUBCONTRACT (this "Subcontract") is made and entered into as of this _____ day of _____, 200 3 by and between KB HOME ORLANDO LLC, a Delaware limited liability company, with an address of 108 Park Place Boulevard, Kissimmee, Florida 33619 ("Contractor") and Builders First Source, a _____ with an address of 11 Sol Ryland Court Orlando, ("Subcontractor") to perform the Work (as defined below) in connection with that certain "Project", defined as that portion of the community identified as " _____ " and by the following Tract/Plat and Lot(s) designation: _____

SUBCONTRACTOR HEREBY WARRANTS AND REPRESENTS THAT IT IS A DULY LICENSED CONTRACTOR UNDER THE LAWS OF THE STATE OF FLORIDA AND THAT ITS LICENSE NUMBER IS SB-0-163270-80-2

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

1. **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 of _____, the scope of which is more fully defined in Exhibit A - Scope of the Work, hereto and (b) shall include all work of such type and trade classification for the Project, and is to be performed in strict compliance with this Subcontract and the Contract Documents (as defined in Paragraph 10 hereof) 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 and 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.

2. **Contract Sum.** In consideration of, and for the full and faithful performance of the Work and the other obligations of Subcontractor 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 3 and 4 and Exhibit B - Pricing attached hereto and made a part hereof. Payment of the Contract Sum is subject to additions and deductions for approved Changes in the Work (as defined 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 14 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 duration of the Work.

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 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. 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 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.

3. **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" described in Paragraph 4 below) which is completed by the 10th calendar day of a calendar month, for which (i) appropriate Authorization for Work Performed ("AWP") Forms have been approved and executed by the project superintendent of Contractor and (ii) appropriate invoices for the same portion of the Work have been properly prepared in the manner described below, as applicable. Such AWP Forms and accompanying invoices must be submitted to Contractor's accounting office (at the address stated in the first paragraph of this Subcontract) on or before the 15th calendar day of the particular month. Contractor agrees that, if such documentation is "properly prepared" as set forth below and received on or before the 15th calendar day of the particular month, Subcontractor shall be paid by the 25th calendar day of that month.

(b) In order for any invoice for Work to be "properly prepared" all of the following must be true with respect to each invoice:

(i) The portion of the Work thereby billed 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 and Subcontractor's insurance policies are in full force and effect in compliance with Paragraph 13 below. All material and workmanship furnished or performed by Subcontractor shall be further subject to final inspection, tests, and acceptance by 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.

1

(ii) The Invoice must contain the identifying number of this Subcontract (and addendum number, if applicable) as stamped at the top of page 1 of this Subcontract.

(iii) All prices contained in the invoice must agree in all respects with the applicable price schedule set forth in Exhibit B hereto.

(iv) The invoice must designate the name of the subdivision, tract number, lot, plan, elevation and/or building number, and all other information applicable to the Work.

(v) The Retained Percentage should not be deducted by Subcontractor on the form of the invoice; Contractor's accounting department will calculate and deduct the Retained Percentage as appropriate.

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

(vii) The invoice shall not demand any progress payment other than those permitted in Exhibit B hereto.

(viii) 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 Exhibit A above, including Changes in the Work, as defined in Paragraph 16 below (the "Additional Work").

(ix) The invoice shall be accompanied by an affidavit in which Subcontractor acknowledges (A) that it has received full payment to date and (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 any indebtedness to any sub-subcontractor, materialman or employees) have been paid for in full. The invoice shall further 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 6, below). *Lien releases will be marked, contingent upon payment in full through date listed.*

(c) The following shall apply to any invoice for Additional Work:

(i) The Additional Work billed is satisfactorily complete at the time of receipt of the invoice.

(ii) The invoices shall comply with subparagraphs 3(b)(ii), 3(b)(iv) and 3(b)(vi) hereof, and additionally must reference an Order (as defined in Paragraph 5 below) by number. Subcontractor must attach a copy of the applicable Order to the invoice. No Additional Work should be commenced by Subcontractor without first obtaining an Order. Moreover:

(A) If Contractor's project superintendent requests Additional Work, and the charge for the Additional Work is \$50.00 or less, it is the obligation of Subcontractor to obtain a written Work Order from Contractor on Contractor's form before proceeding; however, Work Orders are NOT valid for any amounts over \$50.00.

(B) If Contractor's job superintendent or other personnel of Contractor requests Additional Work and the charge exceeds \$50.00, Subcontractor must receive a written Purchase Order from Contractor's office personnel on Contractor's form before proceeding with such Additional Work. ~~In emergency type situations only, Contractor's project superintendent may give verbal Purchase Order number and request an immediate start date. Subcontractor may proceed on that basis, however, it is Subcontractor's responsibility to secure an appropriate Purchase Order prior to invoicing the emergency Additional Work.~~

(iii) If Subcontractor receives a Purchase Order from Contractor that is for a different dollar amount than the invoice submitted, a revision to the particular Purchase Order must be approved in writing by Contractor. Contractor's accounting department cannot and will not pay an amount different from the Purchase Order without an approved revision.

(d) ~~As applicable under Chapter 713, Florida Statutes, Contractor has the right to make any payment due to Subcontractor hereunder by joint check in Subcontractor and its sub-subcontractors, material suppliers or employees which have performed work or furnished materials under this Subcontract regardless of whether lien releases have been submitted to Contractor.~~

4. ~~Payment of Retained Percentage. Ten percent (10%) of the portion of any invoice approved by Contractor shall in Contractor's sole discretion be withheld from all progress billings ("Retained Percentage"). To the extent provided below, the Retained Percentage less 150% of the cost of completing subcontractor's obligations shall be paid not later than forty-five (45) days after the date of issuance of any certificate of occupancy or equivalent approved final inspection has been issued by the applicable municipality for the residence in which the applicable portion of the Work was performed. Payment of the Retained Percentage shall be contingent upon Contractor's receipt of (i) an AWP 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. No progress payment made pursuant to Paragraph 3 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 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. 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 of progress payment invoices described in Paragraphs 3(b) or 3(c) hereof, as applicable.~~

5. ~~Maximum Payments. Notwithstanding the provisions of Paragraphs 3 and 4 hereof, but excluding the payment of the Retained Percentage which shall be governed by Paragraph 4 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 Additional Work unless such Additional Work is 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 Additional Work.

6. Payment Use Verification; Waiver of Claims.

(a) Lien Releases. ~~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) that all labor, materials, equipment and services used in connection with or incorporated in the Work or any Additional 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, 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 are attached hereto for reference purposes as Exhibits C-1 through C-4, inclusive.~~

(b) Waiver of Claims. ~~Subcontractor agrees that except as provided in Chapter 713, Florida Statutes, it shall waive all rights to make any demand for payments under this Subcontract 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 3(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, which may authorize a legal proceeding of any form after said first anniversary date.~~

7. Lien; 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 the 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 actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor and/or (b) have the right to deduct, retain, and backcharge pursuant to Paragraph 25 below, retain out of any payment, advance or guaranty of funds due or to become due to Subcontractor an amount sufficient to protect and indemnify Contractor from and against any and all liability, loss, cost, damage and/or expense, (including, without limitation, attorneys' fees and expenses) arising out of or relating to any such lien or claim, until the lien or claim has been satisfied in full by Subcontractor.

8. 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 responsibility 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 responsibility 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 in writing 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 by Subcontractor. Loss or damage due to acts of Subcontractor may be backcharges pursuant to Paragraph 25 below.

9. Lien Indemnification. Subcontractor shall at all times indemnify and save Contractor harmless against all liability for claims and liens for labor performed or materials used or furnished to be used in connection with the Work, including any costs and expenses for attorneys' fees and all damages, including incidental and consequential damages and lost profits resulting to Contractor from such claims or liens. Further, in case suit on such claim 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 is 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 reasonable attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided Subcontractor causes the effect thereof to be removed, promptly in advance, from the Project.

10. Examination of Documents; Representations of Contractor.

(a) Subcontractor agrees that, prior to its execution of this Subcontract, it has (i) reviewed and examined and understands this Subcontract and its scope of work, all of the construction plans, drawings, models, specifications, measurements, submittals of Subcontractor approved by Contractor pursuant to Paragraph 17(a) below, and addenda thereto relevant to the performance of the Work (collectively, 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 on the basis of Subcontractor's own examination, inspection, review and investigation of the Contract Documents and the Project Site and is not relying on the opinion or representations of Contractor except those which have been expressly provided to Subcontractor in writing in this Subcontract. 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 Construction Documents or the Project Site, including, without limitation, the discovery of any facts or circumstances either relating to the Contract Documents or the Project Site, including those which may be latent or unforeseen, which are at variance from that which Subcontractor believed to be in existence at the time of Subcontractor's execution hereof.

(b) Information provided by Contractor regarding the Project Site or Contract Documents is 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 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 the Project for Subcontractor to perform its Work based upon then-most-updated Contract Documents expressly approved in writing by Contractor. With the exception 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 of Florida 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 and hold harmless Contractor, including its officers, agents, employees, affiliated parent and subsidiary companies and each of them from and against any and all Claims (as such term is defined in Paragraph 14 below) arising out of or in connection with Subcontractor's failure to perform its Work in accordance with the then-current Contract Documents. *It is understood that THIS INDEMNIFICATION shall remain in force for TWO (2) YEARS FROM DATE OF SHIPMENT OF LABOR*

(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 offered by Contractor to its home-buying customers and that the labor, materials and/or services to be performed by Subcontractor pursuant to the Work identified herein shall be sufficient and satisfactory to allow Contractor to fully comply with such new home limited warranty for the type of Work or products provided by Subcontractor. Subcontractor acknowledges and accepts that, among other things, such new home limited warranty (i) extends its benefit to successor owners of the applicable home and (ii) requires, to the extent permitted by law, the use of arbitration as a means of binding dispute resolution in the event of disputes between Contractor and an applicable homeowner and further accepts such terms; further, similar terms are 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 binding 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 the Work of this Subcontract, Subcontractor shall willingly participate in such dispute resolution forum to the extent any of its indemnification obligations under Paragraph 14 of this Subcontract are triggered. Subcontractor further agrees to defend, indemnify and hold harmless Contractor from all Claims (as defined in Paragraph 14 below) brought by homebuyers pursuant to said new home 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 warranty or CC&Rs in conformity with its indemnification obligations described in Paragraph 14 below. *THIS INDEMNIFICATION shall remain in force for TWO (2) YEARS FROM DATE OF SHIPMENT OF LABOR AT THE JOB SITE.*

(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 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. Subcontractor shall be responsible for all of the acts of its employees while they are on the Project, including, but not limited to, acts such as theft or vandalism.

(f) Any alterations or deviations from the plans and specifications dictated or required by any applicable provisions of Laws (as defined in Paragraph 21 below) or in order to assure that the finished product to be furnished by Subcontractor will be suitable for its intended use 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, incomplete, inadequate, nonconforming, or otherwise inferior Work, whether performed by Subcontractor or any other entity, and will immediately report such discovery 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 liability arising directly or indirectly from such actions.

11. Proprietary Nature of Plans. Contractor's architectural, structural, civil, landscape drawings, architectural plans, and specifications, and all other design materials with respect to the project (the "Design Documents") are and shall remain the property of Contractor whether or not the Project is built. The 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 this Subcontract. Except as necessary to complete the 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 this project shall not be construed as a publication that undermines or otherwise derogates Contractor's ownership rights.

12. No Assignment. Subcontractor acknowledges that Contractor is relying upon the experience, expertise and ability of the present officers, stockholders 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 (ii) subcontract the whole or any material part of this Subcontract, 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 or partners of Subcontractor prior to the completion of the Work, Contractor shall have the right, at its option, to terminate this Subcontract pursuant to Paragraph 24 below. Subcontractor shall not assign any amounts due or to become due under this Subcontract without first providing written notice thereof to Contractor.

13. Insurance.

(a) Subcontractor shall, at Subcontractor's sole cost and expense and with insurers reasonably approved by Contractor with respect to any policy required hereunder, maintain in full force and effect for the entire term of this Subcontract the following types of insurance:

(i) Worker's Compensation insurance (including employers' liability) with minimum limits of \$1,000,000 each for bodily injury by accident (per accident per person), bodily injury by disease (policy limit) and bodily injury by disease (each employee). Subcontractor must maintain such a policy and provide Contractor with a certificate of insurance from SIRS or a certificate evidencing self-insurance.

(ii) commercial general liability insurance written on an occurrence basis, with general aggregate limits of at least \$1,000,000 per occurrence and at least \$1,000,000 products/completed operations, or Combined Single Limit of at least \$1,000,000 consisting of both bodily injury and property damage coverage and including products completed operations coverage and contractual liability expressly covering, without limitation, all liability to third parties arising out of or related to its performance of the Work or other activities at or about the Project, including, without limitation, Subcontractor's obligations under Paragraph 14 hereof, including, but not limited to, the following: premises/operations, products/completed operations, owners/contractors protective, independent contractors, contractors protective coverage, blanket contractual liability, broad form property damage (including completed operations), personal injury, "X", "C" and "U" coverages, and liability for damages to property caused by blasting or explosion, collapse or structural injury to building or structure, and/or damage to property below the surface of the ground, and effective no later than the date Work by Subcontractor on the Project is commenced ~~through no earlier than four (4) years after Work by Subcontractor on the Project is completed;~~

(iii) automobile liability insurance, including liability for all owned, hired and non-owned vehicles, with minimum limits of \$1,000,000 for bodily injury per person, \$1,000,000 property damage and \$1,000,000 combined single limit per occurrence; such coverage must be for (A) "any auto" or (B) "all owned autos, hired autos and non-owned autos"; and

(iv) such other insurance in such amounts, as may from time to time be reasonably required by Contractor, landowner, master developer, applicable government agencies or any lender on the Project against the same or other insurable hazards and evidence of such insurance.

(b) For each insurance policy to be obtained by Subcontractor as set forth herein, Subcontractor agrees that any deductible and/or self-retained limits shall be identified in the applicable insurance certificates described in subparagraph (d) below and shall not exceed \$10,000 in the aggregate; provided, however, as an alternative, Subcontractor may, at its sole cost and expense, obtain a written waiver of such deductible or retained limit maximum from an authorized officer of Contractor, which waiver may be withheld in Contractor's sole discretion and which waiver shall only be effective if provided in writing by an authorized representative of Contractor.

(c) Contractor, and its parent, subsidiary and affiliate companies and their officers, directors and employees shall be added as insureds ("additional insureds") under each commercial general liability policy identified in subparagraphs 13(a)(ii) and (iii) above, which additional insured status shall include ongoing operations and completed operations coverage. Specifically, the policy shall include an ISO form CG2010-11-85 endorsement adding as insureds: Contractor (with the KB Home entity name expressly stated), KB Home, a Delaware corporation, and their affiliated companies, owners, partners, officers, directors and employees and such third parties described in subparagraph (a)(iv) above. The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance coverage carried by or otherwise available to Contractor or the additional insureds will be excess only and will not contribute with this insurance. Subcontractor's liability insurance must be on an occurrence basis and shall not be on a "claims made" basis unless expressly approved in writing by a senior officer of KB Home, a Delaware corporation. All insurance policies required herein shall be issued by responsible insurance companies, maintaining an A.M. Best's Rating of A-VI or better and qualified to do business in the state where the Work and/or Project is located.

(d) Prior to the start of the Work, Subcontractor shall furnish Contractor with certified copies of ~~all such policies and~~ valid certificates of insurance including appropriate additional insured endorsements as required in subparagraph (c) above for all of such policies showing the carriers, policy numbers, names of additional insureds (including Contractor) and expiration dates as well as the endorsements naming Contractor as an additional insured according to the specifications of this Paragraph 13. The certificate for the commercial general liability policy must evidence "broad form" and "completed operations" coverage. The applicable Subcontractor insurance policy number and the name of Subcontractor (as the "insured") must appear on the endorsement certificate. All insurance policies shall contain provisions (which shall be designated on the certificate of insurance) that the coverage afforded thereunder shall not be canceled or reduced, nor shall restrictive modifications be added, without providing Contractor with at least thirty (30) days prior written notice thereof. 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 appropriate insurance certificates (including additional insured endorsements) are on file with Contractor which are current and meet all the applicable requirements contained in this Subcontract. Notwithstanding the foregoing, commencement of work by Subcontractor and/or payment by Contractor shall not be deemed to relieve Subcontractor of any of the requirements under this Paragraph 13. In addition to Subcontractor's obligations set forth elsewhere in this Paragraph 13, copies of Subcontractor's insurance policies, shall be delivered to Contractor upon Contractor's demand.

CERTIFICATES

(e) No acceptance of insurance certificates or additional insured endorsements by Contractor shall in any way limit or relieve Subcontractor of its duties and responsibilities under this Subcontract. Further, any provision on any Certificate of Insurance provided by Subcontractor that states anything to the effect that the Certificate does not confer rights to insurance upon Contractor is hereby deemed deleted from said Certificate.

(f) Subcontractor hereby agrees to immediately notify (or cause its insurers or insurance broker to notify) Contractor of any receipt of a notice of cancellation or rescission received from an insurance carrier referring to or relating to a policy which names Contractor or the additional insureds or which may otherwise impact the ability of Subcontractor to fully perform its obligations hereunder (including, without limitation, the indemnity obligations of Subcontractor set forth in Paragraph 14 below).

(g) Endorsements known as "ACORD 25S" or similar endorsements, (including but not limited to CG 20 10 03 97, CG 20 09 (1984), CG 70 57(03-96) and USMP 1097(0498)) are used by certain Insurers but none of such endorsements is acceptable to satisfy the provisions of this Paragraph 13. A "claims made" policy is not acceptable unless specifically agreed to by Contractor pursuant to Paragraph 13(c). Also, policies containing exclusions for prior acts or exclusions for condominiums/and or attached product are not acceptable.

(h) If Subcontractor fails to obtain, secure and/or maintain any of the insurance coverages required by this Subcontract, Contractor shall have the right (without any obligation to do so, however) (i) to terminate this Subcontract pursuant to Paragraph 24 hereof ~~and to secure same in the name of and for the account of Subcontractor in which event, Subcontractor shall pay the cost thereof and shall furnish, upon demand, all information that may be required in connection therewith.~~ Notwithstanding anything to the contrary, waiver of these insurance requirements, including the amount or extent of coverage, may only be obtained upon Contractor's written consent.



(i) 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 any potentially applicable policy of insurance.

~~(j) Subcontractor hereby waives any right of subrogation which it may have against Contractor with regard to any loss or damage arising out of or incident to the perils insured against by the policy of Insurance described herein. 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 or did not pay the insurance premium directly or indirectly, whether or not such person or entity had an insurable interest in the property damaged.~~

(k) Subcontractor shall require all of its subcontractors 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 Agreement, which include all required attachments, and which afford the same guarantee of notice of cancellation as is required of Subcontractor under this Subcontract.~~

14. Indemnification.

(a) With the exception that this Paragraph 14 shall in no event be construed to require indemnification by Subcontractor to an extent prohibited by the laws of the state in which the Project is located 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 discretion), and hold harmless Contractor and Contractor's officers, partners, designees, directors, shareholders, consultants, predecessors, successors, assigns, agents, representatives, employees, divisions, affiliates, parent and subsidiary companies, and any lender of Contractor with an interest in the Project and each of them (individually, "Indemnified Party" and collectively, "Indemnities") from and against any and all claims, demands, causes of action, liabilities, judgments, settlements, losses, costs, inspections, reinspections, damages and/or expenses in law or equity, contract or tort, (including, without limitation, attorneys' fees, in-house legal fees, professional, expert and consultant fees, 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 that in any way arise out of or relate to this Subcontract, the Work hereunder or any other work performed or materials supplied by or on behalf of Subcontractor at the Project and are caused in whole or in part by any act or omission to act (including liability imposed without fault or on the basis of strict liability), active or passive negligence, or willful misconduct by Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable, regardless of the fault or negligence by Subcontractor or those for whom Subcontractor is liable (collectively, the "Claim" or "Claims"). THIS INDEMNIFICATION OBLIGATION COVERS, WITHOUT LIMITATION, ALL CLAIMS that in any way arise out of or relate to: (A) personal injury, bodily injury or death (including, without limitation, emotional injury, physical injury, sickness, disease or death to any person, including, but not limited to, employees of Subcontractor, homeowners or guests of homeowners); and (B) 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, as defined in Paragraph 21. However, Subcontractor shall have no obligation to indemnify Indemnitees for any Claims which arise exclusively from Indemnitees' sole active negligence or willful misconduct, or for defects in design furnished by Indemnitees to a greater extent that permitted by the laws of the state in which the Project is located. Notwithstanding the foregoing, 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. *This indemnification shall remain in force for two (2) years from the last date of shipment of material to or work performed at this job site.*

(b) The indemnification, defense and hold harmless obligations of Subcontractor under this Paragraph 14 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 Indemnitees by an employee of Subcontractor, or anyone directly or indirectly employed 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. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify. It is the intent of the Parties and Subcontractor agrees that Indemnitees (or any of them) may be strictly liable and this provision applies whether the issue of Subcontractor's liability, breach of this Subcontract or other obligation or fault has been determined 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. The Indemnification, Obligations of Subcontractor shall apply with respect to any Claim (including claims for strict liability against Contractor), 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 14. 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 the multiple types of claims and 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 is allocated to that Subcontractor's Work by the attorneys and expert retained by Indemnified Party for its defense.

(c) The Indemnification Obligations shall *remain in force for a period of two years* survive the expiration or earlier termination of this Subcontract, and shall continue until the last to occur of: (i) the last day permitted by Florida 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. *from the date of the last shipment of material to, or work performed at the job site.*

(d) Pursuant to the Indemnification Obligations defined above, Subcontractor agrees to reimburse Contractor for all costs and expenses (including, without limitation, attorneys' fees, in-house legal 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 14 or any good faith settlement of such actions by Contractor. *All payments and/or settlements must be approved in advance by Subcontractor.*

(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 incurred by Contractor 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 Contractor's new home limited warranty or CC&Rs with such 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' legal and expert expenses and costs as they are incurred in connection with the proceedings in question.

~~(f) Pursuant to the indemnification obligations defined above, 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. 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 the Indemnification Obligations set forth throughout Paragraph 14 are intended to extend to and include Claims arising from the strict liability of, and the active or passive negligence of, Indemnitees. This Paragraph 14 thus shall be interpreted to provide for the broadest indemnification of Indemnified Parties, as defined below, allowed by applicable law, with only those words or provisions declared inapplicable as required by applicable law. ~~Subcontractor further understands and agrees that it shall immediately fulfill all of its Indemnification Obligations upon any Indemnitees' written notice to any Subcontractor of any Claim and without any order of any court regardless of whether any Indemnitees have made any payments as to the Claims, including without limitation, any payments for Defense Expenses.~~

~~(h) Notwithstanding the foregoing, this Paragraph 14 shall in no event be construed to limit Indemnitees' rights and remedies in the event of a breach of this Subcontract. This Paragraph 14 shall completely eliminate and preclude any right by Subcontractor to seek any contractual or equitable indemnity or contribution from Indemnitees. Further, Indemnitees' right to seek equitable indemnity or contribution from Subcontractor in no way shall be diminished or precluded by anything in this Subcontract.~~

Subcontractor

By initialing this provision, Subcontractor acknowledges that it has had a full opportunity to discuss, negotiate and knowingly bargain the terms of this Paragraph 14 with Contractor.

15. Taxes and Tariffs. The Contract Sum includes any obligation Subcontractor may have to pay Federal, State and local taxes, tariffs, and duties with respect to this Subcontract. All taxes levied or assessed against Contractor arising out of this Subcontract or the performance of the Work shall be paid by Subcontractor. If Subcontractor is not required to pay or is able to obtain a refund in whole or in part of any such tax which was expressly included in the Contract Sum, the Contract Sum shall be correspondingly decreased for the benefit of Contractor.

16. Changes in the Work.

(a) Contractor shall have the right, from time to time and without invalidating this Subcontract, 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 and this Subcontract as directed by Contractor in writing. Such change or written direction shall not invalidate this Subcontract. 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. 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.~~

(c) If Subcontractor makes any other changes to the Work without written direction from Contractor, 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 Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or in any way arising out of any such change made without written direction from Contractor.

(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.

17. 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 discretion.

(b) Except as otherwise provided herein, all material and workmanship, if not otherwise designated by the Contract Documents, shall be subject to inspection, examination and test by 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. Contractor shall have the right to reject improper or defective material or workmanship or require correction without charge to Contractor. Subcontractor shall promptly segregate and remove rejected material from the Project Site. Nothing contained in this Paragraph 17 shall in any way restrict the rights of Contractor under any warranty by Subcontractor of material or workmanship.

(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 18 of this Agreement. Subcontractor guarantees that all warranties of material and equipment shall become effective only at the later of (a) the date of a Notice of Completion of construction for the home or (b) 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 shall remove any warnings or instructions affixed to any item by the manufacturer.

18. Warranty: 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 shall be in conformance with this Subcontract and the Contract Documents, be of finest quality, and be free from faults and defects of design, material and workmanship for a period of ^{one year} ~~two years~~ from (i) the date of the initial occupancy of the particular residential unit for which an applicable portion of Subcontractor's Work was performed or (ii) for such longer period as may be required by FHA, VA and/or other applicable governmental authorities. Subcontractor agrees to satisfy its warranty obligations upon receipt of verbal or written notice from Contractor requiring same without cost to Contractor. The remedies provided in this Paragraph 18(a) shall not be restrictive but shall be cumulative and in addition to all other remedies of Contractor hereunder and under applicable state 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 state law. If Contractor reasonably deems it more expedient to correct any of the Work covered by this warranty itself because of any delay by Subcontractor, a "backcharge" may be made pursuant to Paragraph 25 below. This provision shall be binding upon the successors and assigns of Subcontractor and shall benefit the successors and assigns of Contractor, including purchasers of residences within the Project.

(b) Notification of the need for warranty work shall be either written or verbal from Contractor and shall be at the sole discretion of Contractor's designated representative. Except as hereinafter provided, all non-emergency warranty work shall be responded to and commenced within three (3) business days of notification and shall be completed within three (3) business days after commencement of the warranty work. Emergency service requests are to be handled immediately. Response time for emergency items shall not exceed five (5) 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. It is the responsibility of Subcontractor to obtain a signature of the residents of the home serviced after such warranty work has been completed to verify the satisfaction of such resident. The work sheet signed by the applicable homeowner should be mailed to the attention of the "Customer 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 warranty work and backcharge Subcontractor appropriately unless Subcontractor can prove in writing that the complaint could not be taken care of (a) due to the inaccessibility of the residence or (b) some other reasonable explanation that such warranty service was not provided. Notwithstanding the foregoing, Subcontractor shall make every reasonable effort to complete service requests within the specified time.

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

(d) Subcontractor shall assign to Contractor or any purchaser from Contractor any manufacturer's, supplier's, distributor's, or other subcontractor's warranties or any other rights of any kind against any such third party. Such assignment will not relieve Subcontractor of any of its other obligations contained in the Contract Documents.

19. Time and Schedule of Work.

(a) Time is of the essence with respect to the performance of Subcontractor's duties under this Subcontract inasmuch as failure of the Subcontract 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, 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.

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

(c) Contractor agrees to conform with the progress schedule issued by Contractor without delaying or hindering Contractor's work or the work of other contractors or subcontractors. This schedule shall be deemed acceptable to Subcontractor unless Contractor is notified by Subcontractor in writing within ten (10) days of the issuance of the schedule. Contractor shall have complete control of the 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 the Project Site.

(d) Contractor, if it deems necessary, may direct Subcontractor to work overtime, and if so directed Subcontractor shall work said overtime and, provided that Subcontractor is not in default under any of the terms or provisions of this Subcontract or of any of the other Contract Documents, Contractor will pay Subcontractor for such additional wages, prorated Worker's Compensation insurance, prorated liability insurance, and prorated levies on such additional wages, if actually documented and paid by Subcontractor. If, however, the progress of the Work or of the Project is delayed by any fault or neglect or act or failure to act of Subcontractor then Subcontractor shall, in addition to all of the other obligations imposed by this Subcontract upon Subcontractor, in such case, and at Subcontractor's own cost and expense, work such overtime as may be necessary, in the opinion of Contractor to make up for time lost and to avoid delay in the completion of the Work and the Project.

(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 last sentence of Paragraph 19(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 this Subcontract is essential to the coordination of the completion of the construction of each of the housing units in the 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 Site. 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 insure the complete coordination of the Project in its entirety as contemplated by the Contract Documents.

(g) Subcontractor shall coordinate the Work covered by this 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. 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 premises.

(h) Should Subcontractor be delayed in the prosecution or completion of the Work by the act, neglect, or default of Contractor, or should Subcontractor be delayed waiting for materials required by this 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 Agreement 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 the Project, Subcontractor shall be liable for all losses, costs, expenses, liabilities, and damages, including incidental and consequential damages, lost profits and liquidated damages, sustained by Contractor, or for which Contractor may be liable to any other party because of Subcontractor's default.

20. 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 the Project or to the property of Contractor or others, Subcontractor shall 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 reasonable 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.

21. Laws. All Work and materials furnished by Subcontractor shall conform to the requirements of all Laws (as defined below). 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 give all notices and comply with all federal, state and local laws ordinances, rules, regulations, codes, standards and orders (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, NPDES 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 D attached hereto and made a part hereof). 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 and provided this Paragraph 22 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by the Laws and public policy of the State of Florida, Subcontractor shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Claims attributable to any acts of commission or omission by Subcontractor, its employees and/or agents resulting from their failure to comply with any Laws, (regardless of whether said failure to comply results in property damage or "resultant" damage), including, but not limited to, any fines, penalties or corrective measures.

In particular, Subcontractor agrees that during the performance of the Contract it will not discriminate against any employee or applicant for employment because of race, religion, sex, color or national origin, and will take affirmative action to ensure that applicants are employed and that employees 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 and applicants for employment, notice to notice to be provided setting forth the provisions of this nondiscrimination clause and to state, in all solicitations and advertisements 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 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, and any other applicable statute or ordinances, plans or programs, standards and regulations 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, its agents, employees, materialmen, and subcontractors with respect to its portion of the Work: Subcontractor shall directly receive and respond to, defend and be responsible for any citation, order, claim, charge, or contractors 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 Contractor. Subcontractor shall indemnify, defend, and hold harmless Contractor from and against any claims, demands, causes of action, liability loss (including any loss of profits or prospective advantage occasioned by the suspension, cancellation or termination of any contract, or Contractor's eligibility therefor), damage, costs, litigation costs, awards, or judgments, fines expenses, including litigation for harm to persons or property, expenses incurred pursuant to or attendant to any hearing or meeting or any other applicable costs which may be incurred by Contractor resulting from Subcontractor's failure to fulfill the covenants set forth in this Paragraph.

This Indemnification shall remain in force for two (2) years from date of shipment OR Labor @ Job Site.

22. 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 by giving three (3) working days written notice to Subcontractor and its surety, if any. If an order for relief is entered under the bankruptcy code with respect to Subcontractor, Contractor may terminate this Subcontract by giving three (3) working days written notice, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee: (i) promptly cures all defaults; (ii) provides Contractor with adequate assurances of its future performance; (iii) compensates Contractor for any actual pecuniary loss resulting from such defaults, and (iv) assumes the obligations of Subcontractor within the statutory time limits.

(b) If Subcontractor is not performing the Work in accordance with this Subcontract at the time of 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 the Project. 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 and expenses. 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 (as defined in Paragraph 14 above), 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.

23. 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. With the exception that this Paragraph 23 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the State of Florida, Subcontractor shall indemnify, defend and hold harmless Contractor, including its officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all Claims, including defense costs, arising out of or in connection with 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 arising out of Subcontractor's Work.

This Indemnification shall remain in force for two (2) years from date of shipment OR Labor @ Job Site.

24. Subcontract Termination: Withholding Payments. Contractor may at any time and for any reason, terminate Subcontractor's services and the 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 Work and placing of orders for materials facilities and supplies in connection with the performance of this Subcontract, 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 may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the Project Site or in transit thereto: Upon such termination, Subcontractor shall be entitled to payment for the Work completed in conformity with this Subcontract; ~~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 all applicable backcharges per Paragraph 25. 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 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 withhold, on account of subsequently discovered evidences nullify, the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and attorneys' fees, on account of (i) defective Work not remedied; (ii) claims or liens filed or reasonable evidence indicating the probable filing of a Claim of Lien; (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 dispute concerning Subcontractor and another subcontractor or vendor; (viii) breach of this Subcontract; (ix) failure to pay; on behalf of any employee, federal or state withholding, FICA, employee benefits (including union trust fund or cooperative committee payments, STS 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 the Work performed by Subcontractor; or (xi) any other ground for withholding payment allowed by law or as otherwise provided in this Subcontract. When and to the extent that the above matters are rectified in the sole judgment and discretion of Contractor, such amounts as then due and owing shall be paid or credited to Subcontractor.~~

25. Backcharges. Applicable backcharges shall include: (a) the costs of replacement, repair or warranty work performed by Contractor or third parties for the benefit of Contractor in Contractor's reasonable judgment; and (b) ~~any increases in the cost of the Work incurred by Contractor in excess of the prices for the Work as agreed with Subcontractor herein in this Subcontract in Contractor's retention of replacement subcontractors. In addition, in order to cover, among other things, the projected cost of warranty work which may be required to be performed by third parties (other than Subcontractor) and Contractor's administrative costs associated with retention of replacement subcontractor(s).~~ Subcontractor acknowledges that Contractor will be adding to any backcharges assessed under the terms of this Contract an administrative charge in an amount equal to fifteen percent (15%) of each such backcharge and Subcontractor agrees to pay such administrative charge to Contractor concurrently with the payment of such backcharge. ~~If backcharges are identified by Contractor after Contractor has paid the Retained Percentage, Contractor shall have the right to apply such valid backcharges to amounts owed to Subcontractor under other subcontracts with Contractor for any other work on the Project Site of any other project site of Contractor. In the event that the Retained Percentage 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.~~

26. Breach of Contract is Breach of All. Subcontractor and Contractor acknowledge that during its performance of this Contract, Subcontractor may also be under contract with Contractor for work at Contractor's other projects or subdivisions. At Contractor's sole election, a breach in the performance of any of Subcontractor's obligations under this Contract shall constitute a breach in Subcontractor's obligations under any other agreement(s) with Contractor and a breach under any other agreement(s) with Contractor shall also constitute a breach of Subcontractor's obligations under this Contract.

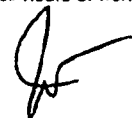
27. Other Contracts. Should one or more contracts now or hereafter exist between the parties hereto or with any affiliated corporation or company of Contractor, concerning this or any construction projects, then a breach by Subcontractor of any contract may, at the sole option of Contractor, be considered a breach of all contracts. In such event, Contractor may terminate any or all of the contracts as breached, ~~it may withhold monies due or to become due on any of such contracts and apply the same toward payment of any damages suffered on that or any other contract.~~

28. Protection of Materials. All Work covered by this Subcontract done at the site or in preparing or delivering materials or equipment, or any or all of them, to the 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 or tools from theft or vandalism. Subcontractor shall assume all responsibility for insuring and/or securing and protecting its materials and tools from theft or vandalism until final acceptance by Contractor. In the event any of Subcontractor's tools are lost, stolen or vandalized at any time or in the event that Subcontractor's materials are lost, stolen or vandalized at any time prior to those materials becoming a fixed part of any housing unit in the Project, Contractor shall have no responsibility for such loss, theft or vandalism and any damages caused to Subcontractor therefore shall be the sole responsibility of Subcontractor.

29. 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 the 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 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 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 Florida law, information posted on the bulletin board will be considered as information passed directly to Subcontractor and its authorized representative.

30. 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.

(a) 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; (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, 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.

(b) ~~Subcontractor, upon request, shall furnish evidence satisfactory to Owner that any or all of the foregoing obligations have been fulfilled.~~

(c) 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 Subcontract sum, comply with all laws, rules, ordinances, and regulations of all governing bodies having jurisdiction over the Work, including but not limited to any and all safety acts of the state and federal governments.

31. Labor Relations.

(a) Contractor represents and warrants that it is bound to the collective bargaining agreements listed as "Contractor's Agreements" and Subcontractor represents that it is bound to the collective bargaining agreements listed as "Subcontractor's Agreements" on Exhibit E attached hereto and made a part hereof, and to no others. Subcontractor understands and agrees that any misstatement of the information listed on Exhibit E, 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 E including trust fund payment into the respective labor trust funds set forth in the respective labor agreements referred to in Exhibit E 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 the Project may be run on a "dual-gate" or "reserve-gate" system. Should there be picketing on the 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, suppliers, visitors and its own sub-subcontractors enter and exit the Project Site through the appropriate gate, as designated by Contractor. If Subcontractor's employees, 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, suppliers or its own sub-subcontractors to perform Work because of picketing anywhere on the 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. *Subcontractor will not put its employees in harm way by crossing a picket line, if this occurs it will not be a breach of this contract.*

(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 covering the Work.

(f) With the exception that this Paragraph 31 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the Laws or public policies of the State of Florida, Subcontractor shall indemnify and save harmless Contractor, including its officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all Claims, arising out of or in connection with Subcontractor's operations to be performed under this Subcontract for Subcontractor's failure to fulfill the covenants set forth in this Paragraph 31, including, without limitation, any and all claims (including, not limited to, 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 type payment obligations connected with the Project, whether or not well founded. *This Indemnification shall remain in force for (2) two years from date of shipment of labor at site.*

(g) Contractor may terminate this Subcontract with Subcontractor (and Subcontractor shall so provide in contracts with its subcontractors) in the event that Subcontractor, or its 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 is terminated pursuant to this provision, Subcontractor shall be obligated to pay the entire cost of completion of the Work called for by said subcontract(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 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.~~

32. 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, the parties will adjudicate any such dispute in the courts of the State of Florida pursuant to the Laws of the State of Florida, and the parties agree that each will accept service of process outside of the State of Florida with the same force and effect as if such process had been served within the State of Florida, and each of the parties agree and expressly consent to the jurisdiction of the Courts of the State of Florida over their persons in connection with this Subcontract and in connection with any litigation which may arise as a result hereof or in connection herewith.

33. Contract Interpretation.

(a) Construction. This Subcontract shall be governed by and construed in accordance with the Laws of the State of Florida without giving effect to conflict of laws provisions. The terms of this Subcontract are 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.

(b) Partial Invalidity. The partial or complete invalidity of any one or more provisions of this Subcontract 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 reasonable attorneys' fees, consultants and experts fees, costs, charges, and expenses expended or incurred therein.

(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 together represent the entire and integrated agreement between the parties hereto with respect to the subject matter hereof and supersedes 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 shall be deemed a personal warranty by that person that such person has the power and authority to bind any corporation, 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. 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 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 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 are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, any rule in any state with respect to Subcontracts) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Subcontract.

(i) Jurisdiction. Each party expressly consents to the personal jurisdiction over them of either the Florida courts or the United States District Courts located within the State of Florida, 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 the Project and/or other Work resulting therefrom.

(k) No Assignment. Subcontractor shall not, without the prior written consent of Contractor, (a) assign or subcontract, in whole or in part, the performance of its obligations hereunder, (b) sublet or otherwise transfer the performance of said obligations, or (c) assign any monies due or to become due to it hereunder. All contracts between Subcontractor and any other person or entity concerning or relating to the performance of this Agreement shall be submitted to Contractor for its written approval.



IN WITNESS WHEREOF the parties hereto have executed this Subcontract for themselves, their heirs, executors, successors, administrators, and assigns as of the date first above written.

SUBCONTRACTOR:

B.F.S.

a _____

By: [Signature]

Its: _____

By: _____

Its: _____

CONTRACTOR:

KB HOME ORLANDO LLC
a Delaware limited liability company

By: Guy Lamb-Verdus Relations Manager

Its: [Signature]

EXHIBIT A

Scope of Work

EXHIBIT B

Pricing

Exhibit C-1 – Conditional Waiver and Release Upon Progress Payment
Exhibit C-2 – Unconditional Waiver and Release Upon Progress Payment
Exhibit C-3 – Conditional Waiver and Release Upon Final Payment
Exhibit C-4 – Unconditional Waiver and Release Upon Final Payment

EXHIBIT D

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 the 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 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, ordinances, rules, regulations, standards and orders with respect to the safety of persons or property, including without limitation all applicable laws, ordinances, rules, regulations and orders of the Occupational Safety and Health Act, 29 U.S.C. section 651 et seq. ("OSHA") or 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 OSHA. This right is applicable even when direct employees of Contractor are not involved. Contractor's project superintendent shall have the right to examine any equipment brought to the job by Subcontractor and to inform Subcontractor of any requirement that Subcontractor's employees 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 or agent of Subcontractor, Contractor (or its job superintendent or Project Superintendent) shall have the right to provide Subcontractor with a written notice (the "Safety Notice") of such failure to comply with the Safety Rules. Such Safety Notice shall be sent by Contractor to Subcontractor at the address given on the first paragraph of this Subcontract and to Subcontractor's field representative and 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 pursuant to Paragraph 22.

(e) Subcontractor also recognizes the obligation of its employees, agents 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) With the exception that this Exhibit D, Paragraph 1 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the State of Florida, Subcontractor shall indemnify and save harmless Owner and Contractor, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all Claims arising out of or in connection with Subcontractor's operations performed under this Subcontract which constitute a violation or infraction by Subcontractor of any Safety Rule or other safety requirement described in this Exhibit D, Paragraph 1.

(h) Subcontractor hereby certifies that its employees have been trained 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.; and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. (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 and 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 with information about any hazardous work environment. As a matter of Contractor's company policy to provide its employees 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 Contractor's superintendent at the Project Site with a copy to the main office of Contractor. 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 at the Project Site. Training of Subcontractor's employees on hazardous chemicals in their work area is solely the responsibility of Subcontractor. It is Subcontractor's sole responsibility to inform its employees 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 Project Site, it is the sole responsibility of Subcontractor to provide to the other subcontractors 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.

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, 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 D, Paragraph 3 shall cause Contractor to incur damages and the parties hereto agree that Contractor shall have the right to backcharge Subcontractor at a rate of thirty-five dollars (\$35.00) per hour for any cleanup not properly completed by Subcontractor.

4. Operation of Vehicles. Subject to the insurance requirements of Paragraph 11 of the Subcontract, Subcontractor agrees that the operation of vehicles in or about the Project Site by Subcontractor or the employees or agents of Subcontractor (including material delivery vehicles operated by material suppliers of Subcontractor) shall be as follows: (s) 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 or agents, or Subcontractor's material suppliers 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 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 in suitable locations as approved by Contractor. In the event Contractor has to tow vehicles owned by Subcontractor, its agents or employees to maintain ingress and egress to the Project Site, all such towing charges will be backcharged to Subcontractor. Neither Subcontractor nor Subcontractor's agents, employees or material suppliers 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 agents or employees or its material suppliers 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 agents and employees. Subcontractor and its employees and agents are not permitted to use the toilet facilities or bathrooms of any housing unit (completed or being constructed) within the Project Site. In the event that Subcontractor or Subcontractor's agents or employees 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 or agents shall not be permitted within the Project. In the event that Subcontractor or Subcontractor's agents or employees 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 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. Neither Subcontractor nor Subcontractor's employees or agents shall be permitted to eat food or drink beverages within a completed housing unit. Subcontractor and Subcontractor's agents and employees shall be responsible for the cleanup of trash generated by any eating and drinking within the Project Site, in the manner described above.

9. Counter-Tops. Subcontractor acknowledges that none of the finished counter-tops contained within or to be contained within each housing unit in the Project Site shall be used by Subcontractor or its employees or agents for the placement of tools or for use as a work surface. The placing of tools or using of such counter-tops as a work surface by Subcontractor or its agents or employees 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 counter-top.

10. Pets. Subcontractor agrees that no pets (other than seeing-eye dogs) shall be brought to the Project Site by Subcontractor or its agents or employees. In the event any such pets are permitted within the Project Site by Subcontractor or its agents or employees, 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 OSHA 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 OSHA an Injury and Illness Prevention Program. In that connection,

(b) Subcontractor has read, understands and will comply with Contractor's Safety Instructions;

(c) Subcontractor has appointed a Safety Program Administrator who has the authority and responsibility to implement the Safety Programs;

(d) Subcontractor has trained its employees and all others who will be on the Project Site under Subcontractor's supervision or at Subcontractor's request (collectively "Employees") in safe and healthy work practices;

(e) Subcontractor will use disciplinary procedures to ensure compliance with such safe and healthy work practices;

(f) Subcontractor has established procedures for reporting unsafe conditions and communicating with Employees on matters relating to occupational safety and health;

(g) 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;

(h) Subcontractor has established and will implement procedures for correcting unsafe or unhealthy conditions and work practices; and

(i) Subcontractor has established and will implement procedures for investigating occupational injuries and illnesses.

(j) Subcontractor so advises that it will provide a "competent person as required by OSHA scaffold and ladder standards in connection with Subcontractor's use of scaffolds and/or ladders on the Project Site.

(k) Prior to the commencement of the Work, Subcontractor will provide Contractor with a written health and safety program and a written hazard communication program.

12. Indemnity. Without limiting the generality of Paragraph 14 of the Subcontract and provided this Paragraph 12 of Exhibit D shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted by law and without limitation to Contractor's rights and remedies in the event of breach of this Subcontract, Subcontractor shall indemnify, defend and hold harmless the Indemnified Parties, as defined in Paragraph 12 of the Subcontract, from and against all Claims, as defined in Paragraph 14 of the Subcontract, arising out of or encountered in connection with 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 caused or 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. The 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, Subcontractor shall have no obligation to indemnify any Indemnified Party against liability for any Claims arising from the sole negligence or willful misconduct of such Indemnified Party, or independent contractors, other than Subcontractor, who are directly responsible to such Indemnified Party or for defects in design furnished by Contractor, its agents or employees or independent contractors, other than Subcontractor, who are directly responsible to such Indemnified Party.

This indemnification shall remain in force for 2 years from the last date of shipment of material or work performed at the job site.





MASTER SUBCONTRACT

Vendor Identification No.: _____

Subcontractor License No.: _____

Full Name of Subcontractor ("Subcontractor"): Buildus FirstSource - Florida, LLC

Trade Classification: _____

Address of Subcontractor: _____

Contact Name and Phone Number of Subcontractor: _____

Cell Phone or Nextel # For Subcontractor Contact: _____

Email Address of Subcontractor Contact: _____

Fax Number of Subcontractor: _____

24 Hour Emergency Phone Number of Subcontractor: _____

Subcontractor is a: _____
(choose one: LLC/Corporation/Partnership/Sole Proprietor)

If LLC, Corporation or Partnership, state of incorporation/formation: _____

Full Name of Contractor ("Contractor"):

KB Home, KB Home Orlando LLC

Address of Contractor:

9102 Southpark Center Loop

Suite 200

Orlando, FL 32819

Subcontractor's Trade Code: _____

General Description of Subcontractor's Work: _____

Subcontractor's Federal Tax I.D. No.: _____

- 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 Master Subcontract: _____

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

Commencing: _____

Ending: _____

*If no ending term is specified, this Subcontract shall remain in effect until terminated by either party as provided herein.

Subcontractor: Builders First Source - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

MASTER SUBCONTRACT

This Master Subcontract (this "Subcontract") is between the KB HOME division identified as "Contractor" above ("Contractor") and the subcontractor identified as "Subcontractor" above ("Subcontractor") to perform the Work (as defined in Paragraph 2 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 and other Contract Documents (as defined in Paragraph 11 below). 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 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 and 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

Subcontractor: Buildus First Source - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

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 (as defined in Paragraph 6 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 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 and, in any event, in accordance with a request for payment which 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

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

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 stamped 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:

(i) Any Changes in the Work which are estimated to cost less than \$5000 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 \$5000.

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

(ii) Any Changes in the Work which are estimated to cost \$5000 or more 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 to 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 under this Subcontract without regard to whether or not lien releases have been submitted to Contractor.

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. The final payment under any Work Order and, if applicable, the Retained Percentage, to the extent provided below, shall be paid not later than _____ () days after 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.

7. Payment Use Verification; Waiver of Claims.

Subcontractor: Builders First Source - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

(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 protect and indemnify Contractor from and against any and all liability, loss, cost, damage and/or expense, (including, without limitation, attorneys' fees, expenses and court costs) arising out of or relating to any such lien or claim, until the lien or claim has been satisfied in full by Subcontractor. These rights and obligations are in addition to and not in replacement of Contractor's rights under Chapter 713, Florida Statutes.

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. Lien 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

Subcontractor:
Subcontract Date:
Term of Subcontract:

Builders FirstSource - Florida, LLC

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 below), and each of them, from and against any and all "Claims" (as defined in Paragraph 15 below), liabilities and liens arising out of, or relating to, 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 below), 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 is 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 costs thereof, together with attorney's fees, expenses and court costs shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit in accordance with Chapter 713, Florida Statutes or other applicable laws of this State, provided Subcontractor causes the effect thereof to be removed, promptly in advance, from the Project.

11. Examination of Documents; Representations of Contractor.

(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 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, including, without limitation, the discovery of any facts or circumstances either relating to the Contract Documents or the Project Site, including, without limitation, those which may be latent or unforeseen, which are at variance from that which Subcontractor believed to be in existence at the time of Subcontractor's execution hereof or at the time of Subcontractor's execution of the applicable Work Agreement.

(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 prior to proceeding with the Work. In the event Subcontractor fails to discharge its obligations hereunder and otherwise proceeds with the Work without timely or proper notification to Contractor of any of

Subcontractor:
Subcontract Date:
Term of Subcontract:

Builders First Source - Florida, LLC

the aforescribed variance, Subcontractor shall be subject to backcharges, deductions and/or other monetary action against monies due under this Subcontract for any Work performed after Subcontractor's discovery of said variance.

(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 arising out of or in connection with 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:

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.

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

(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 (collectively, 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 material 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, KB HOME, as additional insureds and expiration dates. 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

Subcontractor:
Subcontract Date:
Term of Subcontract:

Builders FirstSource - Florida, LLC

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.

(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 to obtain, secure and/or maintain any of the insurance coverages required by this Subcontract, Contractor shall have the right (without any obligation to do so, however) (i) to terminate this Subcontract and any and all outstanding Work Agreements pursuant to Paragraph 25 hereof or (ii) to secure same 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.

Subcontractor: Builders Firstsource-Florida, LLC
Subcontract Date: _____
Term of 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"), 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, in-house legal 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 in any way arise out of or relate to this Subcontract, any Work Agreement, any Work hereunder or thereunder or any other work performed or materials supplied by or on behalf of Subcontractor in, at, about or on any Project and arise out of or relate to, in whole or in part, the presence of, or activities conducted, in, at, about or on any Project, including, without limitation, any act or omission to act (including liability imposed without fault or on the basis of strict liability), 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, regardless of the fault or negligence by Subcontractor or those for whom Subcontractor is liable. THIS INDEMNIFICATION OBLIGATION COVERS, WITHOUT LIMITATION, ALL CLAIMS that in any way arise out of or relate to: (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 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 (including, without limitation, liability imposed without fault or on the basis of strict liability) 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). 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, Subcontractor shall have no obligation to indemnify any Indemnified Party for any Claims which arise exclusively from such Indemnified Party's sole active negligence or willful misconduct, or for defects in design furnished by such Indemnified Party to a greater extent than permitted by Law. Notwithstanding the foregoing, 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:
Subcontract Date:
Term of Subcontract:

Builders FirstSource-Florida, LLC

(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. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify, regardless of any ultimate liability of Subcontractor. 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. It is the intent of the parties and Subcontractor agrees 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 determined 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 (including claims for strict liability against Contractor), 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, in-house legal 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

Subcontractor: Builders First Source - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

Claims arising out of the Limited Warranty or CC&Rs with such 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 the Indemnification Obligations set forth in this Paragraph 15 are intended to extend to and include Claims arising from the strict liability of, and the active or passive negligence of, Indemnified Parties. 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, including but not limited to any costs arising from claim(s) pursued in accordance with Florida's Construction Defect Statute, Chapter 558, Florida Statutes, or pursuant to investigation by Florida's Department of Business and Professional Regulation.

(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.

(j) With regard to any clause or provision of this Subcontract whereby Subcontractor indemnifies and/or holds harmless any Indemnified Party from damages to persons or property caused in whole or in part by any act, omission or default of an Indemnified Party, such indemnification and/or hold harmless provisions are subject to the following monetary limits which the parties hereto agree that each has had full and fair opportunity to consider the amount of this limitation and to consult with legal counsel, and that this limitation is commercially reasonable with regard to the Work performed under each Work Agreement:

- (i) One Million Dollars (\$1,000,000.00) per occurrence, if the amount of the Work Agreement (including Change Orders) does not exceed One Hundred Thousand Dollars (\$100,000.00);
- (ii) Three Million Dollars (\$3,000,000.00) per occurrence, if the amount of the Work Agreement (including Change Orders) exceeds One Hundred Thousand Dollars (\$100,000.00).

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

Additionally, any indemnification provided by either party hereto shall only apply to damages to persons or property caused in whole or in part by any act, omission, or default of (i) Subcontractor; (ii) any of the Subcontractor's subcontractors, sub-subcontractors, material men, or agents of any tier or their respective employees; or (iii) the Indemnified Parties, their officers, directors, agents, or employees. However, notwithstanding anything to the contrary contained in this Subcontract, Subcontractor's duty to indemnify shall not extend to (i) claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the Indemnified Parties; or (ii) claims for statutory violation or punitive damages, except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Subcontractor or any of the Subcontractor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. It is the intent of the parties that all indemnification and/or hold harmless provisions of this Subcontract (i) be interpreted so as to be consistent with Section 725.06, Florida Statutes, including any amendments thereto; and (ii) provide indemnity and defense to the Indemnified Parties and Contractor to the fullest extent permitted by law and this Subcontract.

SUBCONTRACTOR EXPRESSLY ACKNOWLEDGES THAT IT HAS HAD A FULL OPPORTUNITY TO DISCUSS, NEGOTIATE AND KNOWINGLY BARGAIN THE TERMS OF THIS PARAGRAPH 15 WITH CONTRACTOR.

SUBCONTRACTOR'S INITIALS: JD

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. If Subcontractor is not required to pay or is able to obtain a refund in whole or in part of any such tax which was expressly included in the Contract Sum, the Contract Sum shall be correspondingly decreased for the benefit of Contractor.

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.

(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

Subcontractor: Builders FirstSource-Florida, LLC
Subcontract Date: _____
Term of Subcontract _____

with or in any way arising out of any such change made without written direction from Contractor. 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 Certificate of Completion of construction for the home, or (ii) the date of the close of escrow ("COE") 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

Subcontractor:
Subcontract Date:
Term of Subcontract:

Builders First Source - Florida, LLC

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, 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 COE between Contractor 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 arising out of 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. 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 "Customer 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

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

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.

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.

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

(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) Contractor, if it deems necessary, may direct Subcontractor to work overtime, and if so directed Subcontractor shall work said overtime and, in such case only and provided that Subcontractor is not in default under any of the terms or provisions of this Subcontract, any Work Agreement or of any of the other Contract Documents, Contractor will pay Subcontractor for such additional wages, prorated Worker's Compensation insurance, prorated liability insurance, and prorated levies on such additional wages, if actually documented and paid by Subcontractor. Unless directed by Contractor to work overtime as set forth above, Subcontractor shall, in addition to all of the other obligations imposed by this Subcontract and the applicable Work Agreement upon Subcontractor, and at Subcontractor's own cost and expense, 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.

(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.

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

(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 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 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 reasonable 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, 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. Subcontractor shall require all of its

Subcontractor: Builders First Source - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

subcontractors of every tier to comply with any and all requirements of this Section 22. 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 arising out of or related to 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, national origin or, if such discrimination is prohibited by applicable Laws, sexual orientation, 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, national origin, or, if applicable, sexual orientation. 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, national origin or, if applicable, sexual orientation. 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 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 arising out of or related to 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

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

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 insured.

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, arising out of or in connection with 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 arising out of 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 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: Builders FirstSource Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

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, SIRS 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.** Applicable backcharges shall include: (a) the costs of replacement, repair or warranty work performed by Contractor or third parties for the benefit of Contractor in Contractor's reasonable judgment, and (b) any increases in the cost of any Work incurred by Contractor in excess of the prices for such Work as agreed with Subcontractor in this Subcontract and the applicable Work Agreement in Contractor's retention of replacement subcontractors. In addition, in order to cover, among other things, the projected cost of warranty work which may be required to be performed by third parties (other than Subcontractor) and Contractor's administrative costs associated with retention of replacement subcontractor(s), Subcontractor acknowledges that Contractor will be adding to any backcharges assessed under the terms of this Subcontract or any Work Agreement an administrative charge in an amount equal to fifteen percent (15%) of each such backcharge and Subcontractor agrees to pay such administrative charge to Contractor concurrently with the payment of such backcharge. If backcharges are identified by Contractor after Contractor has paid the Retained Percentage or any other final payment, Contractor shall have the right to apply such valid backcharges to amounts owed to Subcontractor under any outstanding Work Agreements; any other subcontracts with Contractor for any other work on the Project Site or any other project site of Contractor. 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 its 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

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

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. Other Contracts. Should one or more contracts now or hereafter exist between the parties hereto or with any affiliated corporation or company of Contractor, concerning any Project which is the subject of a Work Agreement entered into pursuant to this Subcontract or any construction projects, then a breach by Subcontractor of any such contract may, at the sole option of Contractor, be considered a breach of all such contracts. In such event, Contractor may terminate any or all of the contracts as breached, it may withhold monies due or to become due on any of such contracts and apply the same toward payment of any damages suffered on that or any other contract.

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

Subcontractor: Budden JustSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

employment of employees and their hours of work and rates of and the payment of their wages; (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 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

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

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, arising out of or in connection with 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, not limited to, 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 type 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. Arbitration. All claims, disputes and other matters in question between the parties to this Subcontract arising out of or relating to this Subcontract or the breach hereof, shall be decided by arbitration in accordance with the Commercial Arbitration Rules of American Arbitration Association then in effect unless the parties mutually agree otherwise. No arbitration arising out of or relating to this Subcontract shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Subcontract except by written consent containing a specific reference to this Subcontract and signed by Contractor, Subcontractor and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described. This agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Subcontract shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party to this

Subcontractor: Builders FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

Subcontract with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

34. Florida's Construction Defect Statute, Chapter 558, Florida Statute.

(a) Florida's Construction Defect Statute governs standards and procedures for the resolution of construction defect matters prior to the initiation of civil litigation and/or arbitration proceedings, such as provided for in the purchase agreement entered by and between Contractor and homeowners, and applies to claims brought by homeowners (as well as any subsequent purchaser or association holding title to a single or multi-unit residence) alleging a construction defect related to or arising from purchase agreements entered after July 1, 2004 for the design, construction and/or remodel of the residence, provided such purchase agreement contains the Notice of claim Provision as set for in Chapter 558, Florida Statutes; additionally, contracts entered prior to such date may also fall within Chapter 558, provided the homeowner has not initiated suit prior to July 1, 2004. It is understood and agreed that Contractor has (i) determined that the functionality standards set forth in Florida's Construction Defect Statute shall govern the rights and obligations of Contractor and such homeowners with respect to any construction defect claims regarding such residence. Contractor and Subcontractor acknowledge and agree that the Florida Construction Defect Statute applies to this Subcontract and the Work and Subcontractor expressly agrees to reasonably cooperate with Contractor to comply with the procedures and timeframes in said Statute. Subcontractor warrants and represents to Contractor that the services that constitute the Work, including without limitation all designs, plans, and specifications furnished for the Work, and all other aspects regarding the Work to be performed under this Subcontract shall be in conformance with this Subcontract and the functionality standards within all applicable regulations, codes and the like, that such Work will be of the finest quality, and be free from faults and defects of design, for at least the period(s) set forth in Contractor's warranty, which is incorporated herein by reference, or for such longer periods as may be required by FHA, VA and/or other applicable governmental authorities.

(b) 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 set forth in Florida's Construction Defect Statute related to pre-litigation procedures and requirements under Florida's Construction Defect Statute and the warranties 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, 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 Florida's Construction Defect Statute and other applicable laws, codes, regulations, ordinances or other requirement of this State and/or the governmental authority with jurisdiction over the Work).

35. Contract Interpretation.

(a) Construction. This Subcontract and all Work Agreements shall be governed by and construed in accordance with the Laws of the State applicable to contracts entered into and performed in the State by State residents without giving effect to conflict of Laws provisions.

(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,

Subcontractor: Buildus FirstSource - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

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 supersedes 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.

Subcontractor: Builder's First Source - Florida, LLC
Subcontract Date: _____
Term of Subcontract: _____

(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 Division address shown on the cover page of this Subcontract, and to be effective, a copy of any such notice constituting a notice of default hereunder must also be sent to Contractor by a method or methods permitted above to: KB Home, Attn.: Florida Regional Counsel, 9102 South Park Center Loop, Suite 200, Orlando, FL 32819.

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: Deryl Ward
Title: Senior Attorney
Date: 8/16/07

As to Contractor:
Signature: _____
Printed Name: Linda Puffer
Title: Procurement Manager
Date: 9-7-07

[EXHIBITS TO FOLLOW]

Subject to Attached
Contract Addendum

Subcontractor: Supple EBS
Subcontract Date: _____
Term of Subcontract: _____

MASTER SUBCONTRACT

This Master Subcontract (this "Subcontract") is between the KB HOME division identified as "Contractor" above ("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 and 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

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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 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 and, in any event, in accordance with a request for payment which 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

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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 stamped 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:

(i) Any Changes in the Work which are estimated to cost less than \$5000 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 \$5000.

(ii) Any Changes in the Work which are estimated to cost \$5000 or more must be documented in a change order or addendum to this Subcontract signed by Contractor's office

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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 to 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 under this Subcontract without regard to whether or not lien releases have been submitted to Contractor.

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. The final payment under any Work Order and, if applicable, the Retained Percentage, to the extent provided below, shall be paid not later than _____ () days after 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.

7. Payment Use Verification; Waiver of Claims.

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

(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 protect and indemnify Contractor from and against any and all liability, loss, cost, damage and/or expense, (including, without limitation, attorneys' fees, expenses and court costs) arising out of or relating to any such lien or claim, until the lien or claim has been satisfied in full by Subcontractor. These rights and obligations are in addition to and not in replacement of Contractor's rights under Chapter 713, Florida Statutes.

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. Lien 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

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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 arising out of, or relating to, 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 is 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 costs thereof, together with attorney's fees, expenses and court costs shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit in accordance with Chapter 713, Florida Statutes or other applicable laws of this State, provided Subcontractor causes the effect thereof to be removed, promptly in advance, from the Project.

11. Examination of Documents; Representations of Contractor.

(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 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, including, without limitation, the discovery of any facts or circumstances either relating to the Contract Documents or the Project Site, including, without limitation, those which may be latent or unforeseen, which are at variance from that which Subcontractor believed to be in existence at the time of Subcontractor's execution hereof or at the time of Subcontractor's execution of the applicable Work Agreement.

(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 prior to proceeding with the Work. In the event Subcontractor fails to discharge its obligations hereunder and otherwise proceeds with the Work without timely or proper notification to Contractor of any of

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

the aforescribed variance, Subcontractor shall be subject to back-charges, deductions and/or other monetary action against monies due under this Subcontract for any Work performed after Subcontractor's discovery of said variance.

(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 arising out of or in connection with 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: DS

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.

MS

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

(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 material 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, KB HOME, as additional insureds and expiration dates. 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

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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.

(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 to obtain, secure and/or maintain any of the insurance coverages required by this Subcontract, Contractor shall have the right (without any obligation to do so, however) (i) to terminate this Subcontract and any and all outstanding Work Agreements pursuant to Paragraph 25 hereof or (ii) to secure same 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.

Subcontractor: _____
Subcontract Date: _____
Term of 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"), from and against any and all claims, demands, causes of action, liabilities, judgments, settlements, losses, costs, inspections, reinspections, damages and/or expenses in law or equity, contract or tort, (including, without limitation, attorneys' fees, in-house legal 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 in any way arise out of or relate to this Subcontract, any Work Agreement, any Work hereunder or thereunder or any other work performed or materials supplied by or on behalf of Subcontractor in, at, about or on any Project and arise out of or relate to, in whole or in part, the presence of, or activities conducted, in, at, about or on any Project, including, without limitation, any act or omission to act (including liability imposed without fault or on the basis of strict liability), 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, regardless of the fault or negligence by Subcontractor or those for whom Subcontractor is liable. THIS INDEMNIFICATION OBLIGATION COVERS, WITHOUT LIMITATION, ALL CLAIMS that in any way arise out of or relate to: (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 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 (including, without limitation, liability imposed without fault or on the basis of strict liability) 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). 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, Subcontractor shall have no obligation to indemnify any Indemnified Party for any Claims which arise exclusively from such Indemnified Party's sole active negligence or willful misconduct, or for defects in design furnished by such Indemnified Party to a greater extent than permitted by Law. Notwithstanding the foregoing, 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: _____
Subcontract Date: _____
Term of Subcontract: _____

(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. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify, regardless of any ultimate liability of Subcontractor. 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. It is the intent of the parties and Subcontractor agrees 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 determined 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 (including claims for strict liability against Contractor), 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, in-house legal 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

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

Claims arising out of the Limited Warranty or CC&Rs with such 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 the Indemnification Obligations set forth in this Paragraph 15 are intended to extend to and include Claims arising from the strict liability of, and the active or passive negligence of, Indemnified Parties. 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, including but not limited to any costs arising from claim(s) pursued in accordance with Florida's Construction Defect Statute, Chapter 558, Florida Statutes, or pursuant to investigation by Florida's Department of Business and Professional Regulation.

(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.

SUBCONTRACTOR EXPRESSLY ACKNOWLEDGES THAT IT HAS HAD A FULL OPPORTUNITY TO DISCUSS, NEGOTIATE AND KNOWINGLY BARGAIN THE TERMS OF THIS PARAGRAPH 15 WITH CONTRACTOR.

SUBCONTRACTOR'S INITIALS: DS

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. If Subcontractor is not required to pay or is able to obtain a refund in whole or in part of any such tax which was expressly included in the Contract Sum, the Contract Sum shall be correspondingly decreased for the benefit of Contractor.

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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.

(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 made without written direction from Contractor. 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

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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 Certificate of Completion of construction for the home, or (ii) the date of the close of escrow ("COE") 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, 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 COE between Contractor 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 arising out of the defective, deficient or non-conforming Work or its repair or replacement. The remedies provided in this paragraph shall

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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. 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 "Customer 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

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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.

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) Contractor, if it deems necessary, may direct Subcontractor to work overtime, and if so directed Subcontractor shall work said overtime and, in such case only and provided that Subcontractor is not in default under any of the terms or provisions of this Subcontract, any Work Agreement or of any of the other Contract Documents, Contractor will pay Subcontractor for such additional wages, prorated Worker's Compensation insurance, prorated liability insurance, and prorated levies on such additional wages, if actually documented and paid by Subcontractor. Unless directed by Contractor to work overtime as set forth above, Subcontractor shall, in addition to all of the other obligations imposed by this Subcontract and the applicable Work Agreement upon Subcontractor, and at Subcontractor's own cost and expense, 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.

(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,

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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 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 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 reasonable

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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, 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. Subcontractor shall require all of its subcontractors of every tier to comply with any and all requirements of this Section 22. 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 arising out of or related to 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, national origin or, if such discrimination is prohibited by applicable Laws, sexual orientation, 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, national origin, or, if applicable, sexual orientation. 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, national origin or, if applicable, sexual orientation, 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 governmental authority, including without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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 arising out of or related to 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

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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, arising out of or in connection with 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 arising out of 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 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, SIRS 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.

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

26. Backcharges. Applicable backcharges shall include: (a) the costs of replacement, repair or warranty work performed by Contractor or third parties for the benefit of Contractor in Contractor's reasonable judgment, and (b) any increases in the cost of any Work incurred by Contractor in excess of the prices for such Work as agreed with Subcontractor in this Subcontract and the applicable Work Agreement in Contractor's retention of replacement subcontractors. In addition, in order to cover, among other things, the projected cost of warranty work which may be required to be performed by third parties (other than Subcontractor) and Contractor's administrative costs associated with retention of replacement subcontractor(s), Subcontractor acknowledges that Contractor will be adding to any backcharges assessed under the terms of this Subcontract or any Work Agreement an administrative charge in an amount equal to fifteen percent (15%) of each such backcharge and Subcontractor agrees to pay such administrative charge to Contractor concurrently with the payment of such backcharge. If backcharges are identified by Contractor after Contractor has paid the Retained Percentage or any other final payment, Contractor shall have the right to apply such valid backcharges to amounts owed to Subcontractor under any outstanding Work Agreements, any other subcontracts with Contractor for any other work on any Project Site or any other project site of Contractor. 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 its 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. Other Contracts. Should one or more contracts now or hereafter exist between the parties hereto or with any affiliated corporation or company of Contractor, concerning any Project which is the subject of a Work Agreement entered into pursuant to this Subcontract or any construction projects, then a breach by Subcontractor of any such contract may, at the sole option of Contractor, be considered a breach of all such contracts. In such event, Contractor may terminate any or all of the contracts as breached, it may withhold monies due or to become due on any of such contracts and apply the same toward payment of any damages suffered on that or any other contract.

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

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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; (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 into the respective labor trust funds set forth in the respective labor agreements referred to in Exhibit F insofar as Subcontractor

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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, arising out of or in connection with 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, not limited to, 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 type 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: _____
Subcontract Date: _____
Term of Subcontract: _____

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. Arbitration. All claims, disputes and other matters in question between the parties to this Subcontract arising out of or relating to this Subcontract or the breach hereof, shall be decided by arbitration in accordance with the Commercial Arbitration Rules of American Arbitration Association then in effect unless the parties mutually agree otherwise. No arbitration arising out of or relating to this Subcontract shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Subcontract except by written consent containing a specific reference to this Subcontract and signed by Contractor, Subcontractor and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described. This agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Subcontract shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party to this Subcontract with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

34. Florida's Construction Defect Statute, Chapter 558, Florida Statute.

(a) Florida's Construction Defect Statute governs standards and procedures for the resolution of construction defect matters prior to the initiation of civil litigation and/or arbitration proceedings, such as provided for in the purchase agreement entered by and between Contractor and homeowners, and applies to claims brought by homeowners (as well as any subsequent purchaser or association holding title to a single or multi-unit residence) alleging a construction defect related to or arising from purchase agreements entered after July 1, 2004 for the design, construction and/or remodel of the residence, provided such purchase agreement contains the Notice of claim Provision as set for in Chapter 558, Florida Statutes; additionally, contracts entered prior to such date may also fall within Chapter 558, provided the homeowner has not initiated suit prior to July 1, 2004. It is understood and agreed that Contractor has (i) determined that the functionality standards set forth in Florida's Construction Defect Statute shall govern the rights and obligations of Contractor and such homeowners with respect to any construction defect claims regarding such residence. Contractor and Subcontractor acknowledge and agree that the Florida Construction Defect Statute applies to this Subcontract and the Work and Subcontractor expressly agrees to reasonably cooperate with Contractor to comply with the procedures and timeframes in said Statute. Subcontractor warrants and represents to Contractor that the services that constitute the Work, including without limitation all designs, plans, and specifications furnished for the Work, and all other aspects regarding the Work to be performed under this Subcontract shall be in conformance with this Subcontract and the functionality standards within all applicable regulations, codes and the like, that such Work will be of the finest quality, and be free from faults and defects

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

of design, for at least the period(s) set forth in Contractor's warranty, which is incorporated herein by reference, or for such longer periods as may be required by FHA, VA and/or other applicable governmental authorities.

(b) 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 set forth in Florida's Construction Defect Statute related to pre-litigation procedures and requirements under Florida's Construction Defect Statute and the warranties 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, 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 Florida's Construction Defect Statute and other applicable laws, codes, regulations, ordinances or other requirement of this State and/or the governmental authority with jurisdiction over the Work).

35. Contract Interpretation.

(a) Construction. This Subcontract and all Work Agreements shall be governed by and construed in accordance with the Laws of the State applicable to contracts entered into and performed in the State by State residents without giving effect to conflict of Laws provisions.

(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 supersedes 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

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

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 Division address shown on the cover page of this Subcontract, **and to be effective, a copy of any such notice constituting a notice of default hereunder must also be sent to Contractor by a method or methods permitted above to: KB Home, Attn.: Florida Regional Counsel, 8403 South Park Circle, Suite 670, Orlando, FL 32819.**

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: Donald J. Sabia
Printed Name: Donald J Sabia
Title: CFO
Date: 8/25/05

As to Contractor:
Signature: Jane N. Kitchik
Printed Name: Jane N Kitchik
Title: Dir Public Affairs
Date: 8/25/05

[EXHIBITS TO FOLLOW]

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

EXHIBIT A TO MASTER SUBCONTRACT

Form of Work Agreement

[To Follow]

Subcontractor: _____
Subcontract Date: _____
Term of Subcontract: _____

Exhibit A to Work Agreement

Scope of Work

LIST OF KNOWN DEFECTS – EMERALD RIDGE

1. Window and sliding glass door deficiencies, including but not limited to:
 - a. house wrap and flashings not installed properly;
 - b. lack of head flashing;
 - c. lack of sill flashing; and
 - d. sealants at perimeter edge not installed per building code.

2. Stucco, flashing and painting deficiencies, including but not limited to:
 - a. stucco not installed in accordance with ASTM C926, C1063 and Florida Building Code 2504;
 - b. house wrap not installed properly;
 - c. inadequate number of control joints;
 - d. lack of control joints and/or improper spacing of control joints
 - e. horizontal and vertical control joints not installed properly;
 - f. lack of mid-wall weep screed; J-beads used back to back at mid-wall joint with no provision for weep;
 - g. mid-wall flashing not installed properly;
 - h. recessed window return missing adequate provisions for drainage;
 - i. cantilevered overhangs installed without weep provision;
 - j. instances of lack of felt paper under lath; lath fastened directly to housewrap;
 - k. lath not lapped properly;
 - l. incorrectly sized staples that did not penetrate framing members, which does not meet minimum building code requirements;
 - m. excessive and improperly spaced staples in wall sheathing;
 - n. stucco installed in direct contact with dissimilar materials at windows, sliding glass doors and kick out flashing;
 - o. required sealants not provided (at windows, sliding glass doors and kick out flashings);
 - p. stucco bands not installed properly;
 - q. cracks throughout stucco field;
 - r. overall stucco field less than 7/8 inch thickness;
 - s. improperly sealed penetrations;
 - t. wall-to-roof flashing not installed properly or missing;
 - u. underlayment on walls not installed properly; and
 - v. membrane flashing missing at wall around kick out flashing
 - w. missing sealants around kick out flashing.