



## **SUBCONTRACTOR AGREEMENT**

COMPANY NAME: \_\_\_\_\_

This Agreement made this \_\_\_ day of \_\_\_\_\_, 20\_\_ is by and between \_\_\_\_\_ (hereinafter "Subcontractor.") and Sun West Commercial, LLC (hereinafter "Contractor."). This Agreement shall remain in full force and effect until notified in writing by Contractor and/or Contractor's Assignee. The Contractor and Subcontractor agree as set forth below:

### **Article 1: The Subcontracted Work**

- 1.1 Scope of Work includes but is not limited to: See Project-Specific Subcontract Agreement and the Contractor's contract or bid request and/or the Subcontractor's contract or proposal (hereinafter "Contract Documents").
- 1.2 Subcontractor should carefully examine the site as well as any plans, specifications and selection sheets and be fully informed as to the existing conditions and to the work of others in conjunction with Subcontractor's work.
- 1.3 All work of Subcontractor will be performed in a good, professional, workmanlike manner in accordance with plans and specifications. Subcontractor is deemed to know all the requirements of the applicable building codes for Subcontractor's work at the site and Subcontractor's bid price is to include all work and materials required in order to comply with applicable building codes. Work must pass all applicable inspections, federal, state, or local, and meet any building code requirements, regardless if plans or details do or do not reflect said code issue. Anything that is not shown on the plans but that is mentioned in the specifications shall be consulted and addressed by Contractor and Subcontractor prior to Subcontractor commencing work; the resolution thereto shall be memorialized in writing.
- 1.4 Subcontractor shall comply with all laws and regulations that are applicable to activities of the Subcontractor and the Subcontractor's personnel under the Agreement, including but not limited to those laws and regulations that relate to wage and hour requirements, labor relations, employment discrimination, and

immigration. With respect to immigration compliance, the Subcontractor specifically agrees that it is, and will remain, in compliance with the United States statute known as the Immigration Reform and Control Act of 1986, as amended. Further, Contractor may be required to obtain such documentation of citizenship or immigrant status of the Subcontractor's personnel or the Subcontractor's subcontractor personnel entering the premises of Contractor's Clients. The Subcontractor acknowledges and shall ensure that its contracts with all Subcontractors it may use to perform services under this Agreement will contain similar undertakings as set forth in this paragraph.

- 1.5 In the event the Subcontractor should at any time fail to perform the work with reasonable promptness or diligence, the Contractor shall have the right to terminate this Agreement for cause after three (3) days' written notice to the Subcontractor (unless within said three (3) day period the Subcontractor remedies such failure). In the event of termination by Contractor, the Contractor shall finish the Subcontractor's work or have it finished. After all payments are made for finishing the work, the Contractor would pay the Subcontractor any balance remaining.
- 1.6 Subcontractor will be responsible for inspecting the project and completing any deficiencies before requesting payment after Subcontractor completes his or her work. The Superintendent will not approve the invoice for payment until inspection and completion of all items have been performed. 10% Retention may be held on labor contracts until building final is obtained.
- 1.7 No persons under the age of 18 will be permitted on any Contractor job site. Subcontractors employees, subcontractors' suppliers and suppliers' employees must be 18 years of age or older to be present at any Contractor job site.
- 1.8 Identification of the Subcontractor's project team leader along with his/her working email address and cell phone number will be provided to Contractor. It is mandatory that any changes in leadership or point of contact information be provided to Contractor while under contract.

## **Article 2: Insurance**

- 2.1 Subcontractor shall always maintain in full force and effect Commercial General Liability Insurance, Automobile Insurance, and Workers Compensation Insurance. The certificates of insurance shall provide that there will be neither cancellation nor reduction of coverage without thirty (30) days prior written notice to Contractor. Additionally, the selected Insurance companies must have at least an A-VIII rating or better and bond must be a minimum of \$25,000.00. The Subcontractor shall maintain such insurance as will protect the Owner, Contractor, and Subcontractor from claims set forth below which may arise out of or result from the Subcontractor's operations under the Agreement and for which Owner, Contractor, or Subcontractor may be legally liable, whether such operations are those of the Subcontractor, or anyone directly or indirectly employed by any of them, or anyone whose acts may be liable as follows:

(a) Commercial General Liability Insurance: Commercial General Liability Insurance with coverage on an “occurrence” basis. CGL coverage shall be written on an ISO Occurrence form or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, completed operations, ongoing operations, and personal injury. Contractor, Owner, and all other parties required of the Contractor, shall be included as an additional insured on the CGL at the Subcontractor’s expense.

Endorsements or Modifications. The Policy for such insurance shall contain the following coverages, endorsements or modifications:

- i. Completed Operations Coverage. With respect to completed operations liability, when the entire Work has been determined complete by the Subcontractor and accepted by Contractor, Subcontractor agrees to furnish evidence of equivalent continuing coverage for the next two (2) successive twelve (12) months.
- ii. Subcontractor’s Protective Liability to cover Subcontractor’s liability arising out of work performed by its Sub tier Subcontractors.
- iii. Blanket Contractual Liability including arising out of the indemnification agreement set forth herein in the Agreement.
- iv. General Liability must be a minimum \$2,000,000.00 Aggregate and \$2,000,000.00 Products/Completed Ops, and \$1,000,000.00 per occurrence. Claims made policies will not be accepted

(b) Commercial Automobile Liability: Subcontractor shall carry insurance to insure it for operations of all owned, hired, and non-owned vehicles with limits with respect to bodily injury, death, or property damage. Subcontractor shall maintain coverage with not less than a \$1,000,000.00 Combined Single Limit including hired and non-owned automobile liability.

(c) Workers’ Compensation Insurance: Worker’s Compensation Insurance insuring the Subcontractor’s full liability under the Workers’ Compensation and Occupational Disease Laws of Nevada state or Federal law, if applicable, such that (i) Owner and Contractor will have no liability to Subcontractor or its employees, subcontractors and agents; and (ii) Contractor will satisfy all Workers’ Compensation obligations imposed by state law. Subcontractor shall maintain Workers’ Compensation and Employer’s Liability coverage with not less than a \$1,000,000.00 limit, covering:

- i. Claims under workers’ compensation, disability benefit acts, and other similar employee benefit acts which are applicable to the Work to be performed; and
- ii. Claims for damages because of bodily injury, occupational sickness or disease, or death of employees.

2.2 Subcontractor must provide Contractor with a certificate of insurance verifying compliance with the above requirements. If the Subcontractor’s insurance or license expire or cancel, Contractor will hold all payments until such paperwork

is provided to the Contractor's office and work must cease until subcontractor complies.

### **Article 3: Indemnification**

- 3.1 To the fullest extent permitted by law, and whether or not caused in part by Owner and Contractor, Subcontractor shall indemnify, defend (at Subcontractor's sole cost and expense and with legal counsel approved by Contractor, which approval shall not be unreasonably withheld), protect and hold harmless Owner and Contractor, all subsidiaries, divisions, and affiliated companies of Owner and Contractor, and all their representatives, partners, designees, officers, directors, shareholders, consultants, successors, assigns, agents and employees (collectively the "Indemnified Parties"), for, from and against any and all claims (including, without limitation, claims for bodily injury, death, and damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, costs and expenses, (including, without limitation, actual attorney's fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs and Owner and Contractor's general and administrative expenses), and liabilities of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise from or in any manner relate (directly or indirectly) to any Work performed or services provided under this Agreement (including without limitation, defects in workmanship or materials and/or design defects, if the design originated with Subcontractor) or Subcontractor's presence or activities conducted on the Project (including without limitation, the negligent and/or willful acts, errors and/or omissions of Subcontractor, its principles, officers, agents, employees, vendors, suppliers, consultants, sub consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them) regardless of any active or passive negligence or strict liability of an Indemnified Party. Subcontractor understands and acknowledges that the indemnification obligation hereunder is intended to constitute a specific indemnity provision under Nevada law and extends to and includes Claims arising from the active or passive negligence of Indemnified Parties. Notwithstanding the foregoing, nothing herein shall be construed to require Subcontractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the indemnified Parties. The indemnification shall survive completion of the Work and termination of this Subcontract. Moreover, should Owner or Contractor be forced to institute a proceeding to establish said duty to indemnify, Owner and Contractor shall also be entitled to recover its actual attorneys' fees and costs incurred in establishing said duty.
- 3.2 Duty to Defend: The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists immediately upon notification to Subcontractor by the Contractor, regardless of any prior determination of 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 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. Subcontractor's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully barred by the applicable statute of limitations and/or repose. Subcontractor's liability for indemnification hereunder is in addition to any liability Subcontractor may have to Owner and Contractor for a breach by Subcontractor of any of the provisions of this Subcontract. Under no circumstances shall the insurance requirements and limits set forth in this Subcontract be construed to limit Subcontractor's indemnification obligation or other liability hereunder. Moreover, should Owner or Contractor be forced to institute a proceeding to establish said duty to defend, Owner or Contractor shall also be entitled to recover its actual attorneys' fees and costs incurred in establishing said duty.

#### **Article 4: Payment**

The Contractor agrees to pay Subcontractor for the performance of this Agreement, as specified within the Contract Documents. All unit prices shall remain in effect for the completion of the project. Price changes will not be accepted on projects under contract. Subcontractor is to submit AIA's standard form of Application for Payment, form G702 and G703, along with the required releases to [invoices@sunwestcustomhomes.com](mailto:invoices@sunwestcustomhomes.com). Price changes will not be accepted on projects under contract.

4.1 **THE FOLLOWING ARE CONDITIONS PRECEDENT TO SUBCONTRACTOR'S RIGHT TO RECEIVE AND CONTRACTOR'S OBLIGATION TO MAKE PAYMENT:**

(a) Subcontractor shall submit its invoice for payment in accordance with Contractor's billing procedures along with all supporting documentation as designated by Contractor, including without limitation, such executed lien waivers, labor releases and releases in the statutory form executed by Subcontractor and its subcontractors, employees and suppliers of every tier.

(b) CONTRACTOR IS PAID BY THE OWNER OF A GIVEN PROJECT FOR WHICH SUBCONTRACTOR'S WORK WAS ACTUALLY PERFORMED AND INCORPORATED INTO SUCH PROJECT. RECEIPT OF PAYMENT FROM SUCH OWNER OF A GIVEN PROJECT FOR SUBCONTRACTOR'S WORK IS A CONDITION PRECEDENT TO PAYMENT FROM CONTRACTOR TO SUBCONTRACTOR. IN THE EVENT SUCH OWNER OF A GIVEN PROJECT PAYS CONTRACTOR LESS THAN ALL AMOUNTS DUE TO CONTRACTOR, INCLUDING AMOUNTS ATTRIBUTABLE TO SUBCONTRACTOR'S WORK, CONTRACTOR IN ITS SOLE DISCRETION MAY APPORTION THE NONPAYMENT EQUITABLY AMONG ITSELF AND ITS VARIOUS SUBCONTRACTORS AND SUPPLIERS AND REDUCE THE PAYMENTS OTHERWISE DUE SUBCONTRACTOR ACCORDINGLY. Upon complete performance of this Agreement by the Subcontractor, and final approval and acceptance of Subcontractor's Work by the Owner, the Contractor will make

final payment to Subcontractor of the balance due to it under this Agreement within 30 days after full payment of such Work has been received by the Contractor from the Owner.

4.2 Change Orders, Invoices, and Extra Work: No alteration, addition, omission or change shall be made in the work or in the method or manner of the performance of the work, except upon the written change order from Contractor. Any change or adjustment in the Subcontract price by virtue of the change order shall be specifically stated in the change order.

(a) Subcontractor must number each contract and subsequent change order and subcontractor's invoices must reference contract number to be approved for payment. Invoices without contract/estimate numbers will not be approved for subcontract work.

(b) Subcontractor hereby agrees to make any and all changes, furnish the materials and perform the work that Contractor may require, without nullifying this Agreement, at a reasonable addition to, or reduction from, the contract price stated herein, and pro rate the same. Subcontractor shall adhere strictly to the plans and specifications unless a change therefore is authorized in writing. Under no condition shall Subcontractor make any changes, either as additions or deductions, without the written order of the Contractor through its Project Manager and not its Job Superintendent, the Contractor shall not pay any extra charges made by the Subcontractor that have not been agreed in writing by the Contractor, and, in no event, shall the Contractor make payment for any such extra charges unless and until the Contractor receives payment from Owner who commissioned work related to this Agreement. Subcontractor shall submit immediately to the Contractor written copies of its cost or credit proposal for changes on the work. Disputed work shall be performed as ordered in writing by the Contractor and proper cost or credit breakdowns therefore shall be submitted without delay by Subcontractor to Contractor.

(c) Subcontractor shall give notice of claim relating to any work for which extra compensation is asserted within five (5) working days after such work is performed or Subcontractor shall be deemed to have abandoned any claim thereof.

(d) If the Subcontractor initiates a substitution, deviation, or change in the work that affects the scope of the work or the expense of other trades, Subcontractor shall be liable for the expense thereof.

(e) Contractor's obligation to increase the amount to be paid to the Subcontractor under this Agreement shall be limited to the amount Contractor receives from the Owner for such work, less any amounts allowed to Contractor for Contractor's overhead, profit, bond premium, and work performed, by Contractor or others in connection therewith.

(f) Invoices for contract work not billed within 60 days of work specified on invoice will be reduced 10%, reduced 20% after 90 days, reduced 50% after

120 days, reduced 75% after 150 days and invoices submitted for work completed over 180 days prior to presenting invoice for payment will not be honored. Extras not billed within 30 days will not be honored. Subcontractor is responsible to submit original invoices with original labor and conditional releases and material supplier and/or out of stock releases. Subcontractor understands the only exception to this requirement is deposit requests. No extras or changes will be paid if not previously approved and written on a change order and signed by both parties. Superintendents are only authorized to accept change orders up to \$300.00. Any unauthorized/unsigned change orders will not be guaranteed payment.

## **Article 5: Prosecution of Work**

- 5.1 Subcontractor is to furnish all necessary equipment, labor, supervision, tools, supplies and material necessary for the performance of this Agreement in a proper, efficient and workmanlike manner. Such items are included in the bid price. The Subcontractor shall prosecute the Work undertaken in a prompt and diligent manner whenever such Work, or any part of it, becomes available, or at such other time or times as the Contractor may direct, and so as to promote the general progress of the entire construction, and shall not, by delay or otherwise, interfere with or hinder the work of the Contractor or any other Subcontractor. Any materials that are to be furnished by the Subcontractor hereunder shall be furnished in enough time to enable the Subcontractor to perform and complete its Work within the time or times provided for herein. The Subcontractor agrees to reimburse the Contractor for any and all liquidated and/or actual damages that may be assessed against and/or collected from the Contractor which are attributable or related to the Subcontractor's failure to perform the Work required by this Subcontract within the time fixed or in the manner provided for herein, and in addition thereto, agrees to pay to the Contractor such other or additional damages as the Contractor may sustain by reason of such delay by the Subcontractor. The payment of such damages shall not release the Subcontractor from its obligation to otherwise fully perform this subcontract.
- 5.2 Subcontractor is to leave premises clean (work area to be broom swept). All excess materials, crates, pallets, boxes, cartons, packaging or shipping materials are to be hauled off by Subcontractor. Subcontractor is responsible for keeping any debris away from adjoining properties. If Subcontractor does not comply, Contractor will have debris cleaned at the expense of the Subcontractor which may be deducted from what payment is owed to Subcontractor pursuant to the Agreement.
- 5.3 Subcontractor will supply a sufficient labor force to meet the work contracted. Subcontractor shall provide an English-speaking foreman for entire project on site during contracted work. Furthermore, subcontractor agrees to perform work on the day of days scheduled or subcontractor agrees to be charged up to \$1,000.00 a day in penalties. Contractor agrees to give two days of lead time prior to day scheduled.

Contractor Initials:\_\_\_\_\_

Subcontractor Initials: \_\_\_\_\_

- 5.4 Subcontractor shall notify the Superintendent immediately of any material damaged or material shortage, and of any deficiencies of prior work that would cause a delay or an inferior job in Subcontractor's phase of work. If Subcontractor willfully or knowingly covers up inferior work, Subcontractor will be responsible to fix his work as well as whatever he covered up. Subcontractor starting contracted phase of work constitutes acceptance of prior work done by others. Subcontractor accepts responsibility for all material delivered to jobsite in advance of installation. Contractor will be held harmless and not liable for damage, theft, etc. on early-delivered materials.
- 5.5 Subcontractor shall be responsible for compliance with the Federal Occupational Safety Hazard Acts (OSHA) and all other federal, state, municipal and local occupational hazard and safety acts.
- 5.6 All work and materials are subject to the satisfaction and acceptance of Contractor. Payments made to Subcontractor for work will not discharge the obligation of Subcontractor for satisfactory materials or work, including but not limited to defects that become apparent later.
- 5.7 The Superintendent assigned has the power to direct all the work from start to finish. Should there be any dispute regarding details, workmanship, discrepancies, etc., the matter will be settled immediately by the Superintendent's decision, and this decision shall be final.
- 5.8 Subcontractor agrees to pay all bills when due for materials and labor used on Contractor's jobs. Subcontractor agrees to deem such jobs free and clear of mechanics or materialmen's claims or liens. Contractor may, at its option, but is not required, make any checks payable jointly to Subcontractor and any one or more of its suppliers or workers

**Article 6: Independent Contractor**

Subcontractor must protect all public and private improvements including but not limited to telephone, utilities, sewer, gas, curb, drive, sidewalk, phone lines and Subcontractor will be responsible for all damages. The Subcontractor understands and agrees that it is an independent contractor and that it shall be responsible for and pay any and all taxes, contributions, fees and similar expenses imposed directly or indirectly for its work, labor, material and services required by or relating to this contract. The Subcontractor shall at the Subcontractor's own expense apply for and obtain all necessary permits and conform strictly to the laws, ordinances, and regulations applicable in the locality where the work is performed. At no time shall the contract price increase or escalate as a result of any such charge. On demand, the Subcontractor shall substantiate that all taxes and other charges are being properly paid.



## **Article 7: Other Contracts**

Unless express, written authorization to do so is received from Contractor, Subcontractor agrees not to contract for additional work directly with Owner or subcontractors nor to engage other contractors or subcontractors to perform work on the project until the project is complete. The Subcontractor will do no work unless contracted to perform work.

## **Article 8: Prohibited Activity**

The use of drugs, alcohol or tobacco is strictly prohibited on or near any Contractor job site; any persons found with drugs or intoxicated from drugs or alcohol will immediately be pulled off the jobsite.

## **Article 9: Theft**

Theft by Subcontractor or any employee of Subcontractor will be grounds for immediate dismissal and will be punishable by law. Any replacement expense will be held from Subcontractor's payment. Contractor will not be responsible for any damage to or loss of Subcontractor's materials stored on jobsite regardless how or where stored.

## **Article 10: Warranty**

Subcontractor or supplier shall furnish to Contractor, copies of all specifications, installation instructions and warranty information for materials included in their bids. Subcontractor agrees to provide a warranty of not less than one year from the date Contractor closes with the Owner as follows:

All work will be completed in a good, neat and professional workmanlike manner in accordance with plans and specifications and in compliance with all applicable federal, state and local requirements. All materials used shall be new and of good quality and free of any defects. All labor and material will be guaranteed against defect. Subcontractor agrees to contact Owner within 48 hours after receiving a request for warranty work to be performed and promptly correct the problem within ten (10) working days at Subcontractor's expense. If work is not completed in a good and workmanlike manner or in accordance with the plans and specifications, or work does not pass all applicable inspections federal, state and local-or meet all building code requirements before payment has been made for the work, it is agreed that Contractor may withhold all payments until all problems are remedied. Payments on other contracts in progress (Including contracts with Sun West Custom Homes LLC) may also be withheld if prompt attention is not given to the foregoing, discovered within one year, on a previous job. However, if Subcontractor refuses or does not so perform within said time periods, Contractor may contract for another Subcontractor's services to perform and correct materials of Subcontractor. Subcontractor shall be obligated to pay any such bill immediately upon its receipt.

Contractor Initials:\_\_\_\_\_

Subcontractor Initials: \_\_\_\_\_

Subcontractor is not authorized to make any representations, promises or warranties to the homebuyer or owner without written prior authorization of Contractor.

**Article 11: Confidentiality**

Subcontractor shall not use or distribute for use the name of Contractor's client or any of the work related to the Agreement to any news release, including photographs and films, advertisement, public announcement or other form of publicity or disclose any terms of the contract to any third party, deny or confirm same or any part of the subject matter of any contract or any phase of any work on any project without securing prior written approval from both Contractor and Contractor's client.

**Article 12: Disputes**

If at any time any controversy or dispute shall arise between Contractor and Subcontractor in relation to this Agreement or work contracted in relation to the Project, which is not resolved by negotiation or mediation, then such controversy or dispute shall be subject to binding arbitration. After request by either party that any dispute, claim, controversy or question should be arbitrated, arbitration shall be conducted in accordance with Construction Industry Arbitration Rules of the American Arbitration Associations. All applicable pre-litigation requirements as set forth in NRS Chapter 40 shall be followed by all parties as to applicable disputes prior to utilizing arbitration remedies. Only one arbitrator shall be selected to hear any such disputes. Any arbitration hearing permitted shall be held in Las Vegas, Nevada and shall be held within six (6) months after the appointment of the arbitrator, unless otherwise agreed to in writing by the Contractor and Subcontractor. Unless otherwise agreed to in writing, Contractor and Subcontractor shall exchange copies of all essential documentation relevant to the support or defense of the matter being arbitrated within sixty (60) days of commencement of the arbitration proceedings. The arbitrator is authorized to award any party whose claims are sustained, such sums as the arbitrator shall deem proper and shall compensate such party for the time and expense attributable to the arbitration proceeding, including any and all reasonable attorneys' fees, professional fees and costs expended. Unless otherwise agreed between the parties in writing, the arbitrator shall fix the arbitrator's own compensation and shall assess such compensation, costs and charges of the proceedings upon either or both parties, in the arbitrator's discretion. Any arbitration award shall be final and binding on all parties, and a judgment may be entered upon it in accordance with the applicable law in the court having jurisdiction thereof.

**Article 13: Submittal Protocol**

All submittals (i.e., shop drawings, requests for information (RFIs), profiles, paint draw downs, etc.) must be given for approval prior to purchasing materials or commencement of work. No exceptions. Standard protocol requires submittals to be emailed to the Project Manager and the Project Manager's Superintendent.

**Article 14: Severability**

The invalidity of any provision of the Contract Documents shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

**Article 15: Choice of Law**

The Agreement shall be governed and construed in accordance with the laws of the State of Nevada.

***Your signature below indicates acceptance to previous items 1-15.***

**COMPANY NAME:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**PHONE NUMBER:** \_\_\_\_\_ **FAX NUMBER:** \_\_\_\_\_

\_\_\_\_\_  
**SUN WEST COMMERCIAL LLC  
REPRESENTATIVE**

\_\_\_\_\_  
**DATE**