

## ***SUBCONTRACTOR AGREEMENT***

This Subcontractor Agreement (this "Agreement") is made effective as of \_\_\_\_\_ 20\_\_\_\_, by and between 5280 Home Construction, of 6638 W. Ottawa Ave., Littleton, Colorado 80128 ("5280") and Subcontractor name/info, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ ("Subcontractor name/info").

### **RECITALS**

5280 has entered into a contract dated \_\_\_\_\_ (the "Original Contract") with Property Owner for job of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ ("Property Owner for job"). Under the Original Contract, 5280 has agreed to brief overall job description, and wishes to subcontract with Subcontractor name/info for a portion of the services contemplated by the Original Contract. Subcontractor name/info is willing to provide such services.

### **AGREEMENT**

Therefore, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. Description of Services. Beginning on July 16, 2014, Subcontractor name/info will provide the following services and/or materials (collectively, the "Services") as described on the attached Exhibit A. These services will be performed at the following address: Property Address, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

Subcontractor name/info will complete the Services strictly in accordance with any applicable plans and specifications as contained in the Original Contract, and in a workmanlike manner, meeting all local and state building codes, including the Uniform Building Code or other applicable local regulations.

2. Payment for Services. In exchange for the Services, 5280 will pay Subcontractor name/info In accordance with attached Schedule A Payment will be made, less retainage, In accordance with terms described in Schedule A. 5280 will withhold no more retention from Subcontractor name/info than is being withheld by Property Owner for job from 5280 with respect to Subcontractor name/info's work. The retained amount shall be paid by 5280 within 30 days after completion of the Services and acceptance of those Services by Property Owner for job or Property Owner for job's designated agent. Subcontractor name/info will, if requested, provide final lien waivers upon final payment of all sums due Subcontractor name/info.

3. Completion. All Services shall be completed by Subcontractor name/info on or before \_\_\_\_\_.

4. Permits. Subcontractor name/info shall be solely responsible for obtaining and paying for all necessary permits, licenses, and any other instruments required to perform the Services. 5280 will fully cooperate with Subcontractor name/info in the obtaining of any permits and licenses, as necessary.

5. Indemnity and Insurance.

a. Subcontractor name/info agrees to indemnify and hold harmless 5280, Owner, Design Professionals, and their respective agents and assigns from all claims, losses, damages, expenses, fees including attorney fees, costs, settlements and judgments arising out of the performance of Subcontractor name/info or resulting in whole or in part from the actual or alleged acts, omissions, or breaches of this Subcontract by Subcontractor name/info, or the violation of any relevant laws by Subcontractor name/info or its employees, agents or others under its control while performing the Services under this subcontract.

b. Subcontractor name/info shall procure and maintain, at its own expense, insurance policies, of each and every type, and with provisions and coverage amounts substantially identical to \$1 million per event/ \$2 million per year, corresponding requirements of 5280 as described by the terms of the Original Contract. All such insurance shall be with companies acceptable to 5280, shall name 5280 as an additional insured, and shall provide thirty days notice to 5280 prior to cancellation or amendment. Subcontractor name/info shall provide 5280 with written proof of compliance with this paragraph prior to the commencement of the Services.

6. Change Orders. If Property Owner for job requests or requires any change either expanding or limiting the work to be performed under the Original Contract, Subcontractor name/info shall accept such change orders. 5280 agrees to provide Subcontractor name/info with written notice of any such change orders as soon as practical after 5280 receives such notice. Any resulting increase or decrease in the subcontract price provided for in Paragraph 2 must be in writing, mutually agreed to, and signed by both parties. If the parties are unable to reach an agreement regarding any price adjustment for a change order, Subcontractor name/info will proceed with the change order work and the matter shall be submitted to arbitration under the laws of Colorado within thirty days from the issuance of the change order. Such arbitration shall set the change order price allowing 5280 a reasonable profit, after considering direct costs and reasonable overhead expenses.

7. Unforeseen Conditions and Acts of God.

a. Reasonable additional, unexpected costs directly related to an existing, concealed condition or other situation that may be revealed during construction, shall be the sole responsibility of 5280. Further, Subcontractor name/info shall not be held responsible for reasonable delays caused by such conditions.

b. This Agreement is subject to *force majeure*, including without limitation, accidents, acts of God, fire, explosion, vandalism, storm, weather conditions, labor strikes, orders or acts of military or civil authority, national emergencies, insurrections, riots, wars, or other delays beyond the reasonable control of the parties. Subcontractor name/info shall not be held responsible for reasonable delays caused by such events, but shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance.

c. Nothing in this Agreement shall preclude Subcontractor name/info's claims for recovery of delay damages caused by 5280, Owner, Design Professionals or parties other than Subcontractor, its employees, agents or others under Subcontractor's control on this project.

8. Default. The occurrence of any of the following shall constitute a material default under this Agreement:

a. The failure of 5280 to make a required payment when due.

b. The insolvency or bankruptcy of either party.

c. The subjection of any of either party's property to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.

d. The failure of Subcontractor name/info to deliver the Services in the time and manner provided for in this Agreement.

9. Remedies on Default. In addition to any and all other rights available according to law, if either party defaults by failing to substantially perform any material provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may elect to terminate this Agreement if the default is not cured within ten days after providing written notice to the defaulting party. The notice shall describe with sufficient detail the nature of the default.

10. Relationship of the Parties. The provisions of this Agreement are not intended to create, nor shall be deemed or construed to create, any joint venture, partnership or other relationship between 5280 and Subcontractor name/info other than that of independent entities contracting with each other solely for the purpose of carrying out the provisions of this Agreement. Neither of the parties to this Agreement, nor any of their respective employees, agents, or other representatives, shall be construed to be the agent, employee or representative of the other party. Neither party shall have the authority to bind the other party nor shall a party be responsible for the acts or omissions of the other party, unless otherwise stated in this Agreement. Similarly, Subcontractor name/info expressly acknowledges that Subcontractor name/info is not an agent, employee or representative of Property Owner for job and covenants to represent itself accordingly.

11. Access, Signage Rights and Design Plans.

a. During the term of this Agreement, Subcontractor name/info shall have at all times reasonable access to the construction site, and both Subcontractor name/info and 5280 will take all reasonable steps necessary to coordinate the progress of construction with other subcontractors so that the project can be completed in a timely manner.

b. During the term of this Agreement, Subcontractor name/info may erect one temporary sign showing its name, service mark, trade name or other commercial name, identifying Subcontractor name/info as performing services on the construction project. The sign must be appropriate in appearance, style and size, and must conform to all applicable federal, state and local laws.

c. 5280 will make available to Subcontractor name/info all plans, specifications, drawings, blueprints, and similar construction documents necessary for Subcontractor name/info to provide the Services. Any such materials shall remain the property of 5280. Subcontractor name/info will promptly return all such materials to 5280 upon completion of the Services.

12. Notices. Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses listed above or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the third day after mailing if not signed for.

13. Entire Agreement. This Agreement contains the entire Agreement of the parties regarding the subject matter of this Agreement, and there are no other promises or conditions in any other agreement whether oral or written.

14. Waiver. No waiver by either party of any breach of this Agreement shall be deemed to waive any other breach. No acceptance of payment or performance after any breach shall be deemed a waiver of any breach. No failure or delay to exercise any right by a party upon another's default shall prevent that party from later exercising that right, nor shall such failure or delay operate as a waiver of any default.

15. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

16. Amendment. This Agreement may be modified or amended only if made in writing and signed by both parties.

17. Applicable Law. This Agreement shall be governed by the laws of the State of Colorado.

18. Assignment. Neither party may assign or transfer this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

19. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, representatives, successors and assigns.

20. Signatories. This Agreement shall be signed by Shaun Farrell, Owner on behalf of 5280 Home Construction and by \_\_\_\_\_ on behalf of Subcontractor name/info and shall be effective as of the date first written above.

SUBCONTRACTOR:  
Subcontractor name/info

By: \_\_\_\_\_  
\_\_\_\_\_

GENERAL CONTRACTOR:  
5280 Home Construction

By: \_\_\_\_\_  
Shaun Farrell  
Owner