

# SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement ("Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and is by and between Cannon Homes, LLC, an Arkansas corporation doing business as "Cannon Homes" ("Contractor"), and \_\_\_\_\_ ( "Subcontractor").

WHEREAS, Contractor is a licensed general contractor who constructs residential homes, commercial buildings, and remodels structures from time to time; and

WHEREAS, Subcontractor is in the business of providing the following generally described materials and labor (see below regarding the extent to which Subcontractor provides any materials) and labor regarding construction projects:

\_\_\_\_\_ ; and

WHEREAS, Contractor may wish to utilize Subcontractor to provide "Subcontractor's Work" (as defined below) in the future from time to time, and Contractor and Subcontractor are entering into this Agreement in order to set forth the terms of the relationship between Contractor and Subcontractor for each and every future job or project where Contractor is the general contractor and where Subcontractor provides any Subcontractor's Work.

It is therefore agreed:

**1. Jobs and Services.** Contractor may call, email, text, or otherwise contact Subcontractor from time to time to inquire as to whether Subcontractor is willing to provide materials, labor, services, or other items or matters (or any combination of the foregoing) on a particular job or project for which Contractor is the general contractor or is otherwise associated in some way. Subcontractor is free to decline any request but if Subcontractor accepts

Contractor's offer/request, on a job/project, this Agreement shall govern the parties' relationship and the terms of the parties' contract of and for that job/project (each an "Accepted Project").

**2. "Subcontractor's Work".** All of Subcontractor's services, materials, labor, supplies, work and efforts provided on an Accepted Project are collectively referred to in this Agreement as the "Subcontractor's Work." Without limiting the generality of the foregoing, "Subcontractor's Work may expressly include installation of materials or items Contractor provides, and whether or the extent to which Contractor shall provide any such materials or items for Subcontractor to install shall be determined on an Accepted Project-by-Accepted Project basis (see also paragraph 7 below). It is Subcontractor's responsibility to review all of Contractor's plans, specifications, requests, and instructions (collectively the "Initial Plans and Specifications"), ask all questions, and do all other things necessary in order for Subcontractor to bid the job/project or otherwise decide whether to accept Contractor's request. In most instances Contractor will either provide Subcontractor with Initial Plans and Specifications or will make them available to Subcontractor. Upon a proposal becoming an Accepted Project, Subcontractor shall be deemed to have conclusively determined, to Subcontractor's satisfaction, the scope of the Subcontractor's Work for that Accepted Project, and that Subcontractor can carry out Subcontractor's responsibilities hereunder and provide all Subcontractor's Work in a timely manner (either as designated by Contractor or within a reasonable time) and in accordance with all other requirements of this Agreement. Subject to the remaining terms of this paragraph regarding Contractor's right to control Subcontractor and conflicts between requirements, Subcontractor will provide and perform all Subcontractor's Work for each Accepted Project in accordance with any additional specifications or descriptions Contractor specifies from time to time after the job or project becomes an Accepted Project (collectively the "Supplemental Plans and Specifications", and the Initial Plans and all Supplemental Plans and Specifications are, collectively, the "Cumulative Plans and Specification"). Unless specifically authorized by Contractor or required by the remaining terms of this paragraph, Subcontractor will not deviate from the Cumulative Plans and Specifications [which Contractor shall have the right (but not the responsibility) to modify from time to time], instructions, or material list, or

otherwise make any changes even if requested by the property owner (if Contractor does not own the property). Only the Contractor has the authority to provide specifications, instructions, or other requirements to Subcontractor, but it is understood and agreed that the Cumulative Plans and Specifications shall not include, and Contractor shall not have the right to require, any specific method to perform Subcontractor's Work. To the extent that Subcontractor's trade requires obtaining a license (whether by the State of Arkansas or otherwise), Subcontractor shall be solely responsible for obtaining said license and complying with all requirements pertaining thereto. To the extent that Subcontractor's trade requires obtaining/pulling a permit, Subcontractor shall be solely responsible for obtaining said permit(s) and complying with all requirements pertaining thereto.

**3. Standards and Requirements.** Subcontractor and its employees, agents, and subcontractors shall provide and perform all Subcontractor's Work in a top-notch, workmanlike and professional standard and manner, free of any defects of any kind, whether of materials, workmanship, latent or otherwise, and in compliance with, collectively: (i) all applicable laws, codes, ordinances, regulations, or other requirements that are applicable to Subcontractor, Subcontractor's Work, or the Accepted Project overall and in general; (ii) any manufacturer's installation or other instructions or requirements provided by the manufacturer of any materials, appliances, or items, regardless of who provides them; and (iii) the Cumulative Plans and Specifications. To the extent of any conflict between (i), (ii), and (iii), the conflict shall be resolved in the order of the requirements as stated above meaning, for example, that any conflict between manufacturer's instructions and applicable laws shall be resolved in favor of applicable laws. Subcontractor shall cause its employees and agents to conduct themselves at all times in a professional manner in their behavior and personal appearance. Subcontractor shall not permit any lien to be filed against any property for on account of any labor or services provided by, through, or under Subcontractor, or on account of any materials purchased by Subcontractor or labor provided on account of any Subcontractor's Work. Subcontractor shall promptly pay, as and when due, all of Subcontractor's employees, subcontractors, vendors, material suppliers and others with whom Subcontractor contracts for any materials or labor. Subcontractor shall comply with all laws that are applicable to Subcontractor

and Subcontractor's operations. Without limiting the foregoing, Subcontractor and all of Subcontractor's employees, agent, and subcontractors shall comply with all OSHA requirements, including without limitation wearing and using all OSHA-required safety equipment.

**4. Special Provisions Regarding Alcohol, Drugs, and Smoking and Other Tobacco Use.** Subcontractor shall not permit any drinking or alcohol or drug use of itself and/or its employees, agents, and subcontractors on the job site of any Accepted Project, and no Subcontractor representatives may be on the job site while under the influence of alcohol or any drug, whether legally ingested or otherwise. All Company jobsites are nonsmoking, including without limitation vaping . Subcontractor shall not permit any smoking or vaping of any kind, whether itself and/or its employees, agents, and subcontractors on the jobsite of any Accepted Project. Cigarette butts attributable to Subcontractor and/or any of its employees, agent, or subcontractors shall be billed to Subcontractor at the rate of \$5.00/per butt. Subcontractor shall not permit the use of any smokeless tobacco of any kind, whether itself and/or its employees, agents, and subcontractors on the jobsite of any Accepted Project, except the street.

**5 Portable Toilet Use.** Subcontractor shall not permit any drawing, writing, or otherwise damaging the portable toilet at each jobsite, or other unauthorized use thereof, whether itself and/or its employees, agents, and subcontractors.

**6. Jobsite Cleaning.** Subcontractor shall comply with all of Contractor's requirements regarding cleaning the job or jobsite during performance of the Subcontractor's Work. Without limiting the foregoing, Subcontractor shall at its own cost and expense clean and remove any trash, bottles, and/or other debris prior to leaving each jobsite each day.

**7. Materials and Tools.** Whether or the extent to which Contractor will provide any materials, items, products, or other tangible item to Subcontractor to perform any Subcontractor's Work on each Accepted Project will be determined either: (a) by separate agreement, which may or may not be in writing; or (b) the nature of Subcontractor's trade. Except to

the extent of any such separate affirmative agreement by Contractor to provide any materials, items, products, or other tangible items, Subcontractor be responsible for providing them so that all Subcontractor's Work may be properly and fully performed pursuant to the terms of this Agreement. Subcontractor agrees that any and all materials or other items billed or otherwise charged to Contractor for each Accepted Project were or will be used solely on that specific Accepted Project. Subcontractor will not waste any materials or items, and if any materials or items provided by Contractor ("collectively "Contractor Materials") are left over or otherwise not used in connection with Subcontractor's Work, Subcontractor shall notify Contractor so they can be returned, credited, or used in connection with one of Contractor's other projects. Subcontractor will not charge or attempt to charge any items to any credit accounts that Contractor has with third parties without Contractor's prior consent. Unless Contractor otherwise agrees in writing, it shall be Subcontractor's responsibility to provide all equipment and tools necessary to complete all Subcontractor's Work, as well as all incidental materials, labor, supplies and other items necessary to perform Subcontractor's Work in compliance with the standards set forth in this Agreement, all at Subcontractor's expense.

**8. Time For Completion of Work.** Subcontractor shall begin performing and providing Subcontractor's Work promptly after accepting Contractor's request thereof or as otherwise designated by Contractor and shall continuously and diligently perform all Subcontractor's Work thereafter until it is completed within the time specified by Contractor. If no specific time is specified Subcontractor shall complete all Subcontractor's Work within a reasonable time.

**9. Compensation.** Contractor will compensate Subcontractor for all Subcontractor's Work in accordance with this paragraph. Invoices must be for work performed and/or materials provided (to the extent permitted by this Agreement) within 10 business days of the work being performed (in the case of labor) or the materials provided to the Approved Project (in the case of materials). To the extent any invoice reflects work performed or materials provided more than 10 business days after it was provided, the late said work and/or materials will not be paid. All invoices must designate the job

name, job address, and a detailed description of work performed and materials provided if payment for any materials is requested. Subcontractor shall also provide such other explanation, information, and documentation as Contractor may require from time to time, including but limited to proof of materials or items purchased by Subcontractor, hours worked by Subcontractor's employees if Subcontractor is being paid on a per-hour or per-piece basis. Subcontractor's invoices for Subcontractor's Work may be submitted to Contractor by mail, email, fax, or in person, but they must be received by Contractor by 4:30 p.m. each Tuesday in order to be paid by Friday of that same week. Invoices received past that deadline will be paid, to the extent payable, the next Friday. Subcontractor shall properly execute and return lien waivers promptly as and when Contractor request.

**10. Changes and Change Orders.** No change or change order from the original scope of work will be allowed or paid for unless approved in advance by Contractor.

**11. Status.** Subcontractor is being engaged as, and shall at all times be, a subcontractor and an independent contractor. Subcontractor's Work involves a skilled trade, so the general means and methods of which can only be determined and carried out by Subcontractor and its agents. Contractor shall not withhold any employment taxes, payroll taxes, or other similar amounts from Subcontractor's compensation, and Subcontractor shall be solely responsible for any and all such taxes or anything similar. Subcontractor agrees to indemnify and hold Contractor harmless from any amounts that Contractor must pay any third party on account of Subcontractor's Work or Subcontractor's operations if it is determined that any such amounts should have been withheld.

**12. Insurance.** It is absolutely critical that Subcontractor comply with Arkansas law and its workman's compensation requirements. At all times Subcontractor shall do one of the following: (a) carry workman's compensation insurance on all of its employees and agents as required by Arkansas law, or (b) obtain and maintain up-to-date valid certificates of non-coverage as allowed by the Arkansas Workers' Compensation Commission ("WCC"), to the extent the WCC permits and issues them. Subcontractor shall

provide copies of all such certificates to Contractor from time to time and as Contractor requests. Subcontractor promises not to obtain or attempt to obtain certificates of non-coverage in situations where it is not permitted by Arkansas law or the rules of the WCC. If Subcontractor utilizes certificates of non-coverage, Subcontractor shall have a current and valid certificate for any person present on the jobsite, no matter why the person is there and even if the person is not intended to be an "employee" or "helper," and even if the person is on the jobsite as a simple observer. Under no circumstances will Subcontractor allow anyone on the jobsite unless he or she has signed a valid certificate of non-coverage that approved by the WCC or the person is covered by a workman's compensation insurance policy. Subcontractor must also carry a general liability insurance policy that covers personal injury and property damage with a combined single limit of not less than \$1,000,000 per occurrence. All insurance policies carried by Subcontractor shall name Contractor as an additional insured and shall contain a provision whereby the insurance company shall give Contractor written notice of any cancellation, expiration or change in the policy at least 30 days prior to such event. Subcontractor shall provide certificates of all insurance required above to Contractor from time to time and as Contractor requests. Contractor and Subcontractor hereby waive all claims against each other to the extent of insurance coverage for such claims. Without limiting the generality of the foregoing, Contractor and Subcontractor waive subrogation to the extent of any and all available insurance coverage.

**13. Indemnity and Hold Harmless.** Subcontractor shall indemnify Contractor and its employees, members, managers, directors, officers, shareholders, agents, successors, assigns, and affiliates (individually and collectively "Contractor Parties") in full, and defend and hold all Contractor Parties harmless from and in full, any and all claims, liabilities, demands, losses, expenses, suits and actions (including without limitation attorney's fees and costs associated therewith), for or on account of breach of this Agreement, and any injury to any person, or death, or any damage to property which arises out of or is alleged to arise out of or in connection with any Subcontractor's Work performed hereunder (and including without limitation providing any materials, appliances, or other items), any preparation to do any Subcontractor's Work, anyone coming to or going from

the jobsite where any Subcontract's Work is being performed, or incurred or suffered while physically present on or near any jobsite where any Subcontractor's Work is being performed if such person or property is there with the knowledge or consent (whether express or implied) of Subcontractor or if such person is an employee, partner, subcontractor, independent contractor or agent of Subcontractor, or if Subcontractor is otherwise responsible for the acts and/or omissions of such person.

Subcontractor's indemnity and hold harmless obligations hereunder exist regardless of any fault or other liability attributable to any Contractor Parties, provided that Subcontractor's indemnity obligations shall not apply if Contractor or any Contractor Parties are solely responsible for such act, omission or damages.

**14. Assignment and Subcontracting.** Subcontractor acknowledges that Contractor is contracting with Subcontractor to perform the Subcontractor's Work based on the particular skill and expertise possessed by Subcontractor. Therefore, Subcontractor shall not assign, subcontract or hire or employee any independent contractor to perform any Subcontractor's Work without Contractor's prior written consent. Subject to the foregoing, this Agreement is binding on the heirs, successors, personal representatives and permitted assigns of the parties.

**15. Warranty Obligations.** Subcontractor acknowledges that Contractor has warranty obligations by contract and under Arkansas law regarding each house and/or property where Subcontractor's Work will be performed and so does Subcontractor. Subcontractor therefore hereby warrants that all Subcontractor's Work performed hereunder and all materials and other items provided by Subcontractor will be of top-notch quality, workmanlike in nature, and free of any defects of any kind, whether of materials, workmanship, latent or otherwise. This warranty shall apply for a reasonable time after Contractor sells the home to a third party, but in any event not less than three years from such date or, if no such transaction occurs, three years from: (a) the date a certificate of occupancy is issued for the home or other structure; or (b) the date the home or other structure is first occupied after completion of Subcontractor's Work; or (c) if neither (a) nor (b) is applicable, the date of Contractor's substantial completion of the project where

Subcontractor's Work was performed. Subcontractor agrees to promptly respond to all warranty claims hereunder and to take whatever action is necessary and spend whatever money is necessary to remedy the problem, all at Subcontractor's expense. Subcontractor further acknowledges that often times an owner will make a warranty claim in situations where it is questionable whether any action or correction needs to be taken.

Subcontractor hereby agrees that Contractor shall have the final decision in whether any corrective action or work needs to be taken, and Subcontractor shall respond and comply with any request from Contractor regarding warranty work.

**16. Term.** The terms of this Agreement shall apply to each and every for which Subcontractor provides any Subcontractor's Work to Contractor or on Contractor's behalf (it being again confirmed that each is an "Accepted Project" hereunder) until Contractor and Subcontractor agree by written agreement that is signed by both Contractor and Subcontractor, that this Agreement is no longer in effect.

**17. Arbitration.** If Contractor is required to participate in any binding arbitration regarding any job or matter where Subcontractor provided any Subcontractor's Work, and if any part of the claim or Contractor's defense involves an allegation that any portion of Subcontractor's Work was defective, faulty, in violation of any contract, or was otherwise provided in such a way to entitle the claimant or Contractor to any relief, Subcontractor agrees that, upon written notice by Contractor to Subcontractor, the matter shall be resolved in the same arbitration proceeding by the same rules that govern said arbitration proceeding.

**18. Waiver.** The terms of this Agreement cannot be waived except in a writing that is signed by or otherwise originates (email) from the person against whom the waiver is alleged to have occurred.

**19. Attorney's Fees.** The prevailing party in any arbitration, litigation, or other dispute proceeding which involves the terms of this Agreement or arises out of any Subcontractor's Work (which includes without limitation supplying any materials or other items supplied by Subcontractor and/or the

installation of any Contractor Materials), the prevailing party or parties shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party or parties.

**20. No Agency.** There is no agency, partnership or joint venture relationship between Contractor and Subcontractor.

**21. Joint and Several Obligations.** If more than one person is listed in the introductory paragraph of this Agreement as a "Subcontractor," all obligations in this Agreement that apply to the "Subcontractor" shall apply jointly and severally to each such person.

**22. Joint Preparation.** Each of the parties to this Agreement is willing to and does assume joint responsibility for the form and composition of each and all of the contents of this Agreement. They further agree that the terms of this Agreement shall be interpreted and construed as though each of them participated equally in its preparation.

**23. Severability.** If any terms or provision of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, the term or provision shall be considered severed from all other terms and provisions of the Agreement, which shall remain in full force and effect.