



SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT is entered into this [REDACTED] day of [REDACTED], 20[REDACTED],
Between Apple Roofing, LLC, A Nebraska Limited Liability Company
("CONTRACTOR"), and [REDACTED] ("SUBCONTRACTOR").

WITNESSETH:

Contractor and Subcontractor, in consideration of the covenants, agreements, and conditions hereinafter contained and set forth, agree as follows:

- 1. Work Order.** Contractor agrees that it shall from time to time offer a job to Subcontractor (the "JOB") on a Work Order form ("WORK ORDER"). A copy of a sample Work Order is attached hereto and incorporated herein by this reference. If Subcontractor accepts the offer, Contractor will pay to Subcontractor the sum shown on the Work Order for each job assigned, and Subcontractor agrees to satisfactorily complete each job for the sums shown on the Work Order. This sum is to be designated as the "Job Cost". Each Work Order shall be subject to all of the terms of this Agreement, which are incorporated therein.
- 2. Equipment.** Subcontractor agrees that it shall furnish all of the necessary labor, supervision, tools, materials, equipment and instrumentalities to perform the Job.
- 3. Safety equipment,** including, but not limited to, harnesses, anchors, ropes, rope grabs, lanyards, retractables, safety glasses, hardhats, ear protection, and gloves shall be the sole responsibility of Subcontractor. Subcontractor shall independently equip its employees with all the required PPE mandated by OSHA. Contractor shall not be responsible for any training, upkeep, or inspections of any safety equipment belonging to the Subcontractor.
- 4. Prosecution of Work.** Subcontractor agrees that it shall perform each accepted Job in a good and workmanlike manner, and that it shall correct any work which is not performed in a good and workmanlike manner to the satisfaction of Contractor and the property owner with whom Contractor has a contract. Subcontractor will make no changes on any Job without the prior written approval of Contractor, and Subcontractor will ensure that all materials used on each accepted Job shall be of good quality so as to adequately meet the intent and specification of the Work Order. Contractor agrees that Subcontractor may charge to Contractor materials for accepted Work Orders by securing a Purchase Order from Contractor for each supplier.

These material costs are to be charged against the Job Cost amount of the Subcontractor on the accepted Work Order.

Subcontractor agrees to be solely responsible for the completion of the Job according to specifications and for the work to be completed in a time frame acceptable to Contractor. Subcontractor shall prosecute the work undertaken in a prompt and diligent manner whenever the Job, or any part of it, becomes available, or at such other time or times as Contractor may direct, and so as to promote the general progress of the entire construction, shall not, by delay or otherwise, interfere with or hinder the work of Contractor or any other subcontractor. If Subcontractor fails to prosecute the work as aforesaid, Contractor shall be entitled to order Subcontractor, at Subcontractor's expense, to provide additional work forces, overtime, and additional shifts, and to expedite the furnishing of materials, so as to avoid delaying, hindering, or interfering with the Job. If the job is for roofing, any open bundles will be left for owner.

- 5. Warranty.** Subcontractor guarantees its workmanship for one year from the date of signing of a completion certificate by the property owner or the receipt of final payment from Contractor, whichever last occurs.
- 6. Correction of Work.** Subcontractor agrees that it shall correct any work it does not perform in a good and workmanlike manner within seven (7) calendar days from the date that it is placed on notice of the problem. If Subcontractor fails to correct such work within seven (7) calendar days, Contractor may take steps to ensure that the problem is corrected and the cost of such correction will be charged against the future amounts due to Subcontractor. In no way is the correction of the problem by Contractor and the charge against future amounts due to Subcontractor to be considered a waiver by Contractor of a breach of this Subcontract Agreement by Subcontractor.

In any event where, as a result of poor or incomplete work, the property is subject to additional damage, Contractor may, at its sole option, elect to correct such damages itself and all such costs will be the responsibility of Subcontractor. Contractor may offset any amounts owed to Subcontractor as reimbursement for such costs.

- 7. Indemnification.** Subcontractor further specifically obligates itself to Contractor in the following respects:
 - a. Subcontractor will indemnify and defend Contractor and its officers, directors, agents, and employees against and save them harmless from any and all claims, damage, loss, expense, suits, or liability for injuries to property, injuries to persons including death, and from any and all other claims, suits or liability on account of or arising out of, in whole or in part, of any act or omission of Subcontractor, or any of its officers, agents, employees, or servants, regardless of whether or not such claim, suit or liability is caused in part or in whole by a party indemnified hereunder. Subcontractor specifically agrees, and the parties intend by this agreement, to indemnify and hold harmless Contractor, Owner, and General Contractor for personal injury, sickness, disease, or death, as well as injury to or destruction of tangible property

caused by the active or passive negligence or fault of Contractor, Owner, or General Contractor, if any. This agreement specifically excludes actions by the Contractor, Owner, or General Contractor, if any, which are construed by the courts as intentional torts or gross negligence. The indemnification and hold harmless obligations hereunder shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts.

b. Subcontractor will pay for all materials furnished and work and labor performed under this Subcontract and agrees to indemnify Contractor and Owner against all lien claims and bond claims, including expenses, costs of bonds to remove liens, and attorneys fees related to such claims, which may be asserted by anyone. Subcontractor also agrees that if a lien is placed on the work or the premises on which the work is performed, it will immediately obtain such bond necessary to remove such lien. If any bond claim and/or lien claim is filed by any subcontractor, supplier or mechanic of Subcontractor, Contractor may suspend payments to Subcontractor and either hold money due to Subcontractor or make payments to the claimants and charge the payments against Subcontractor, without prejudice to the payment bond. It is the intent of parties that the payment bond be for the benefit of Contractor, Owner, and General Contractor, if any, and not for the benefit of third parties except to the extent necessary to protect Contractor, Owner, and General Contractor, if any.

c. Notwithstanding the foregoing, the Contractor, at its discretion, may permit Subcontractor to charge supplies and materials needed for the Job, to Contractor's established accounts with various vendors and suppliers. In such cases, all such charges shall be paid by Contractor and deducted from any amounts due to Subcontractor for that Job or any amounts due or to become due at any time to Subcontractor on any future Jobs.

d. Subcontractor warrants and guarantees the work and material covered by the Subcontract and agrees to make good, at its own expense, any defect in materials or workmanship which may occur or develop prior to Contractor's release from responsibility to the Owner.

e. Subcontractor shall indemnify Contractor and the Owner against, and save them harmless from, any and all loss, damage, costs, expenses and attorneys fees suffered or incurred on account of any breach of any provision or covenant of this Subcontract, including but not limited to damages for delay, liquidated damages or other damages.

f. Subcontractor shall be liable for any and all damages suffered by Contractor that may arise from Subcontractor unilaterally ceasing work on a Job prior to completion of its responsibilities under an assigned and accepted Work Order for that Job.

8. Taxes. Subcontractor agrees that it shall be solely responsible for withholding and payment of all income taxes, FICA taxes, and unemployment compensation taxes on Subcontractor and its

employees, and Subcontractor directs Contractor not to withhold such taxes and agrees that if any federal or state agency rules that Subcontractor is not a bona fide independent contractor and levies any assessments, penalties or back taxes, then Subcontractor shall be solely responsible for such assessments, penalties, or back taxes on itself and its employees.

9. Insurance. Subcontractor acknowledges that it is responsible for all necessary insurance coverage for its vehicles, equipment and personnel (workers compensation, vehicle, liability and other) in such amounts and limits designated by Contractor from time to time, and will provide Contractor a certificate of such insurance from an insurer acceptable to Contractor prior to beginning any Job, including but not limited to, the following:

a. Prior to the Subcontractor's commencing any work or services with regard to the Job, the Subcontractor shall carry commercial general liability insurance on ISO form CG 00 01 1001 (or a substitute form providing equivalent coverage) and the Subcontractor shall provide Contractor with a Certificate of Insurance and Additional Insured Endorsement on ISO form CG 20 10 11 85 (or a substitute form providing equivalent coverage and additional insured on completed operations on ISO form CG 2037 10 01 or equivalent) naming Contractor and the Owner as Additional Insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded to Owner and Contractor. The coverage available to Contractor and Owner, as Additional Insureds, shall not be less than \$1 million dollars Each Occurrence, \$2 million General Aggregate (subject to a per project general aggregate provision applicable to the project), \$2 Million Products/Completed Operations Aggregate and \$1 million Personal and Advertising Injury limits. Such insurance shall cover liability arising from premises, operations, and independent contractors, products – completed operations, personal and advertising injury, and liability assumed under an insured contract. (Including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors. All coverage shall be placed with an insurance company duly admitted in the State of Nebraska. All Subcontractor insurance carriers must be "A" rated by A.M. Best rating service. Coverage shall be afforded to the Additional Insureds whether or not a claim is in litigation.

The insurance coverage required hereunder shall be of sufficient type, scope, and duration to ensure coverage for Contractor or Owner for liability related to any manifestation date within the applicable statutes of limitation and/or repose which pertain to any work performed on behalf of the Contractor or Owner in relation to the Project.

Each Certificate of Insurance shall provide that the insurer must give Contractor at least 30 days prior written notice of cancellation and termination of [REDACTED]'s coverage thereunder. Not less than two weeks prior to the expiration, cancellation or

termination of any such policy, the Subcontractor shall supply the Contractor with a new and replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal of said original policy. Said new and replacement endorsements shall be similarly endorsed in favor of Contractor and Owner as set forth above.

b. Additionally, and prior to commencement of the Work, the Subcontractor shall provide Contractor with a Certificate of Insurance showing liability insurance coverage for the Subcontractor and any employees, agents, or Sub-Subcontractors of the Subcontractor for any Workers' Compensation, Employer's Liability and Automobile Liability. In the event any of these policies are terminated, Certificates of Insurance showing replacement coverage shall be provided to Contractor. Coverages shall be no less than the following: Workers' Compensation and Employers' Liability Insurance: As required by law and affording thirty (30) days written notice to Contractor prior to cancellation or non-renewal, providing coverage of not less than (\$100,000 for bodily injury caused by accident and \$500,000 for bodily injury by disease.)

It is expressly agreed that if Contractor determines, in its sole discretion, that workers compensation is required for Subcontractor, or any of its employees or agents, and Subcontractor has not provided contractor with a certificate of such insurance, then Contractor may secure such insurance and deduct the full cost thereof from any amounts due to Subcontractor for any existing Job or any future Job under any Work Order between the parties.

c. Business Auto Liability Insurance: Written in the amount of not less than \$500,000 each accident.

11. Other Contracts. It is understood and agreed that the Job provided in this Subcontract may constitute only a part of the work being performed for the Owner by the Contractor and other subcontractors. Subcontractor therefore agrees to perform the Job called for in this Subcontract in such a manner that it will not injure, damage, or delay any other work performed by Contractor or any other subcontractor. Subcontractor further agrees to pay Contractor for any damage or delay that may be caused to such other work by Subcontractor or by its agents or employees.

12. Compliance With Laws. Subcontractor shall comply with all applicable federal, state, and local laws and resolutions, including but not limited to laws and regulations relating to safety, health, records, permits, licenses, and employee welfare, including OSHA.

13. Payment. Contractor agrees that it shall pay to Subcontractor the agreed sum stated in the Work Order for each Job on the following basis:

a. **Invoices.** Subcontractor will submit a detailed invoice for each draw prior to payment showing the work and material furnished and an estimate of the percentage of the Job completed to the date of such Invoice.

b. Amount. Contractor will make progress payments to Subcontractor. The amount of each payment shall be based upon the percentage of the Job completed as of the date of the Invoice, as determined solely in Contractor's discretion, less any amounts determined under subparagraph c, below, or under any other provision of this Agreement.

c. Deductions.

(1) Contractor may deduct from any amounts due to Subcontractor any sum or sums owed by Subcontractor to Contractor, and in the event of any breach by Subcontractor of any provision of this Subcontract, or in the event of the assertion by other parties of any claim or lien against Contractor or the premises arising out of Subcontractor's performance of this Subcontract, Contractor shall have the right to retain out of any payment due or to become due to Subcontractor an amount sufficient to completely protect Contractor from any and all loss, damage, or expense therefrom, until the situation has been remedied to Contractor's satisfaction.

(2) As a further condition of making partial or final payment, Contractor may require Subcontractor to prove that the work is and will continue to be free and clear from all lawful claims or liens.

14. Confidentiality. Subcontractor agrees that it shall not discuss prices, cost, expenses, additional work or the terms of this Agreement with anyone other than the salesperson of Contractor and further agrees to notify Contractor immediately of leads or inquiries concerning additional work whenever those leads or inquiries arise from Jobs assigned by Contractor.

15. Independent Contractor. Contractor and Subcontractor agree that the intent of the parties is that an independent contractual relationship shall exist between them. Subcontractor further acknowledges that it is in business for itself. Subcontractor agrees that it shall provide its own office space, telephone service, its own employees, equipment, tools, machinery, vehicles, safety equipment, and all other equipment and services necessary to fulfill this Agreement. Subcontractor shall solely determine the manner and direction of the labor and services necessary to complete each Job pursuant to each Work Order. Subcontractor shall further be responsible for providing, at its expense, workers compensation insurance and all other insurance required of Subcontractor under this Agreement. Subcontractor may advertise its services in any media or manner and further agrees that Subcontractor may accept jobs from other sources as well as from Contractor.

16. Arbitration. Any controversy or claim arising out of or relating to the Agreement or breach thereof which cannot be settled by the parties shall be settled by arbitration. Each party shall select one arbitrator and the two of them shall select a third party and a majority of the three shall decide the issue and such decision shall be binding on each of the parties to the arbitration. A representative of Contractor shall serve as advisor to the committee but shall not be present during any deliberation of the committee. The committee shall determine which party or

parties pay the expense of the arbitration and may require at its own discretion a deposit to cover said expenses.

- a. Notwithstanding the provisions of this Paragraph 14 above, if either party institutes litigation against the other party to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover from the other party all costs and expenses (including reasonable attorneys fees) incurred by the prevailing party in connection with such litigation.

17. Safety. Subcontractor is to complete the work in a safe and expeditious manner. The Subcontractor shall take all reasonable safety precautions with respect to his work, shall comply with all safety measures and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Contract Documents. The Subcontractor shall report within twenty-four (24) hours to the Contractor any injury to any of the Subcontractor's employees at the site. Subcontractor shall abide by all OSHA reporting requirements for serious injury including hospitalization, loss of eye, amputation or death. Subcontractor shall indemnify, hold harmless and defend Contractor for all costs, expenses and liability incurred as a result of Subcontractor's failure to comply with applicable safety laws, rules, regulations and orders, including without limitation, any OSHA violation.

At all times while under the control and supervision of the Subcontractor, the employees of Subcontractor shall be required to follow the safety rules, regulations and procedures instituted by Subcontractor, Contractor or any other contractor on the project and shall comply with all safety requirements identified in the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq., as amended ("OSH Act"). Subcontractor and not Contractor shall be solely responsible for all initial and subsequent safety training of Subcontractor's employees, and Contractor is not responsible for any aspect of Subcontractor's safety training. Subcontractor shall be solely responsible and liable for executing the work in a safe and prudent manner, for establishing safety procedures, for protecting all of the Subcontractor's workers and the public from property damage and/or injury during the performance of work and shall be named as at fault party should incident or violation extend from Subcontractor's work or unsafe practice. Subcontractor shall be specifically responsible and liable for all aspects of its use of the workspace jointly used by different contractors and subcontractors, and Subcontractor acknowledges and agrees that Contractor does not retain supervisory control of such joint use areas for purposes of liability for unsafe conditions.

Subcontractor understands and acknowledges that Subcontractor shall control and implement all required safety procedures, and that Contractor shall only perform occasional inspections to determine conformance with the plans and specifications for the project. As a result, Contractor shall not be able to ensure Subcontractor (while working for Subcontractor) adherence to safety standards and the OSH Act because Contractor cannot reasonably be expected to prevent, detect or abate violative conditions by reason of its limited role on the project. Therefore,

Subcontractor shall be solely responsible for controlling safety on the jobsite as it relates to Subcontractor.

Subcontractor shall sign for receipt and understanding of the Safety Precautions and Procedures Subcontract Agreement attached as an Addendum to this Subcontract Agreement, and shall comply with the same.

16. Termination for Default. Contractor may, after three (3) days written notice of default to Subcontractor, terminate in whole or any part of this Subcontract for any one of the following circumstances:

- a. Subcontractor fails to complete the Job by the completion date.
- b. Subcontractor fails to prosecute the Job in a timely manner and with such diligence as in the opinion of the Contractor will ensure its timely interim or final completion.
- c. Subcontractor fails to comply or becomes disabled from complying with any requirement of the Subcontract Agreement.
- d. A petition in bankruptcy or the appointment of a receiver is filed against Subcontractor.

In the event Contractor terminates this Subcontract in whole or in part as provided in the first paragraph of this section, Contractor may take over and complete the terminated work by whatever method it deems expedient, including the hiring of other subcontractors under such form of contract as Contractor may deem advisable. In such case, Subcontractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the amount to be paid on the Subcontract shall exceed the sum of the expense of finishing the work, compensation for additional material and administrative services or other incidental and consequential costs and damages as Contractor may suffer, plus ten percent (10%) Contractor profit, such excess shall be paid to Subcontractor. If such expenses, compensation, costs, damages, and profit shall exceed such unpaid balance, Subcontractor and its sureties from responsibility for compliance with the provisions of this Subcontract nor prejudice any other rights or remedies of Contractor.

17. Tax Forms. The attached IRS W-9 request for Social Security or Tax ID number to appear on 1099 Forms shall be completed and a copy attached to each Independent Contractual Agency Agreement signed by Contractor.

18. Severability. Should one particular provision of the Subcontract, or any word, phrase, sentence, clause, or paragraph thereof be declared invalid or illegal by any federal, state, county, or municipal government, such invalidity or illegality shall not affect the other provisions hereof, but the remainder of the provisions hereof shall nevertheless remain in full force and effect and shall be construed in all respects as if such invalid or illegal provisions were omitted.

19. Assignment. Contractor and Subcontractor agree that this Subcontract shall not be assigned without the written consent of both parties and further agree that this instrument contains the entire agreement between the parties, and no statement, promise, or inducement made by either party or agent of either party which is not contained in this Subcontract shall be valid or binding.

20. Law. This Subcontract Agreement shall be governed by the laws of the State of Nebraska.

21. Benefit. This Subcontract Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective devisees, heirs, successors-in-interest and assigns.

CONTRACTOR: APPLE ROOFING, LLC

By: Jesse Otto
Name: JESSE OTTO
Title: PRESIDENT OF PRODUCTION

SUBCONTRACTOR: _____ (Company Name)

By: _____ (Signature)
Name: _____ (Print Name)
Title: _____
Fed. ID # _____
SSN: _____
Street: _____
City, State: _____
Zip Code: _____
Telephone: _____
E-Mail: _____

ATTACHMENTS:

Attachment 1 – Safety Compliance



ATTACHMENT 1

Safety Precautions and Procedures Subcontract Agreement

Subcontractor is to complete the work in a safe and expeditious manner. The Subcontractor shall take all reasonable safety precautions with respect to his work, shall comply with all safety measures and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Contract Documents. The Subcontractor shall report within 24 hours to Apple Roofing, LLC any injury to any of the Subcontractor's employees at the site. Subcontractor shall abide by all OSHA reporting requirements for serious injury including hospitalization, loss of eye, amputation or death. Subcontractor shall indemnify, hold harmless and defend Apple Roofing, LLC for all costs, expenses and liability incurred as a result of Subcontractor's failure to comply with applicable safety laws, rules, regulations and orders, including without limitation, any OSHA violation.

At all times while under the control and supervision of the Subcontractor, the employees of Subcontractor shall be required to follow the safety rules, regulations and procedures instituted by Subcontractor, Apple Roofing, LLC or any other contractor on the project and shall comply with all safety requirements identified in the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq., as amended ("OSH Act"). Subcontractor and not Apple Roofing, LLC shall be solely responsible for all initial and subsequent safety training of Subcontractor's employees, and Apple Roofing, LLC is not responsible for any aspect of Subcontractor's safety training. Subcontractor shall be solely responsible and liable for executing the work in a safe and prudent manner, for establishing safety procedures, for protecting all of the Subcontractor's workers and the public from property damage and/or injury during the performance of work and shall be named as the at fault party should incident or violation extend from Subcontractor's work or unsafe practice. Subcontractor shall be specifically responsible and liable for all aspects of its use of the workspace jointly used by different contractors and subcontractors, and Subcontractor acknowledges and agrees that Apple Roofing, LLC does not retain supervisory control of such joint use areas for purposes of liability for unsafe conditions.

Subcontractor understands and acknowledges that Subcontractor shall control and implement all required safety procedures, and that Apple Roofing, LLC shall only perform occasional inspections to determine conformance with the plans and specifications for the project. As a result, Apple Roofing, LLC shall not be able to ensure Subcontractor adherence to safety standards and the OSH Act because Apple Roofing, LLC cannot reasonably be expected to prevent, detect, or abate violative conditions by reason

