



Subcontractor Agreement

This Subcontractor Agreement is hereby entered into as of the day and year of execution below, by and between one or more of the Windjam Companies being further defined and listed on the attached Exhibit A hereto (hereinafter referred to as "Windjam") and _____ (hereinafter referred to as "Subcontractor").

RECITALS

WHEREAS, upon its due diligence and satisfaction, Windjam has selected Subcontractor for work to be described from time to time in additional contract documents and specifications or work orders (hereinafter referred to as "Work" or "work");

WHEREAS, said selected Subcontractor agrees to provide professional and quality services requested by Windjam, all pursuant to the terms, conditions, regulations, requirements and rules stated hereinbelow; and

WHEREAS, adherence to the terms herein by Subcontractor **(to include all of Subcontractor's employees, staff and other subcontractors of any tier classification)** is mandatory hereunder and such adherence will insure that Subcontractor receives prompt and unhampered payment for services from Windjam and a continued partnership with Windjam.

NOW THEREFORE, in consideration of the premises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I - MATERIALS, WORKMANSHIP, AND WARRANTIES

1. All of the materials and equipment to be supplied by the Subcontractor shall be new, suitable and of the first quality for the contracted work as required by the Contract Documents. All tools/equipment used in performance of this contract shall be calibrated in accordance with manufacturers specifications. Calibration documentation shall be provided to Windjam upon request.

2. Unless otherwise specified, the following shall apply:

(a) Subcontractor shall receive, unload, store, and protect materials and equipment in a manner approved by Windjam.

(b) Subcontractor is solely responsible for protection of its job warehoused materials. Any shortages thereof will be replaced by Subcontractor at its expense.



(c) Subcontractor shall be solely responsible for all locations, dimensions and levels, and no pleas as to instructions or orders received from any source other than the information contained in deeds, plot, drawings, and specifications, or in written orders provided by Windjam shall justify departure from the dimensions and levels required by the drawings. Subcontractor shall take its own measurements at the site, verifying same with the drawing at the building, and will be held responsible for the proper fit of completed work in position.

3. Subcontractor warrants that all Work shall be free of defects in design, in workmanship and material and performed in a good and workmanlike manner and shall conform to Contract Documents and conditions of service specified or intended under the conditions specified or reasonably inferable under the conditions specified.

4. Subcontractor warrants to immediately, upon notice thereof from Windjam, repair and/or replace, at Subcontractor's expense, any and all non-specified or faulty work, including repair and/or replacement of defective workmanship or defective materials furnished by Subcontractor that may appear during performance and within one (1) year after final completion and acceptance of the work. If such deficiencies are not immediately corrected, Windjam may cause the same to be corrected for the account of Subcontractor. If Windjam deems it inexpedient to correct work not done in accordance with the Contract, an equitable deduction from the contract price shall be made therefore. Nothing herein contained shall be construed as in any way limiting the liability of Subcontractor under the law applicable to the Work.

5. All materials incorporated in the work shall be regarded as property of Windjam (except as to risk of loss which shall remain with Subcontractor) and such materials shall not be removed without Windjam's prior written consent. Use of storage facilities furnished to Subcontractor by Windjam or another shall not relieve Subcontractor of any such risk of loss unless otherwise agreed in writing.

6. Subcontractor shall assign any and all rights under any warranties it may have received or be entitled to from suppliers of the goods incorporated into the work to the extent such warranties extend beyond the period of Subcontractor's warranties hereunder.

ARTICLE II – SCOPE OF WORK, DOCUMENTS, COMMUNICATION AND PAYMENT TERMS

1. The English language is to be used in all correspondence or communications with Windjam. Subcontractor shall maintain responsibility for this communication either by a crew member of translator provided at Subcontractors expense.



2. All prints, construction documents, and items related to the work are to be considered confidential and shall be secured when not in use. In the event that a set of prints is lost or misplaced in part or in whole, Subcontractor agrees to notify Windjam immediately and Subcontractor shall bear the cost or replacement and/or the damages for such loss, if any.

3. Any work performed outside the scope of work or any work performed that is significantly different from what is specified on prints, in specifications and work orders or in the scope of work will require a signed change order. Any such work performed without a signed change order shall be at the Subcontractor's own expense.

4. Payment shall be made to Subcontractor pursuant to the draw schedule or work order made a part of this agreement for each assignment of work by this reference. Windjam will retain 10 percent of the payment required under the total cost of work bid until final acceptance by Windjam. Windjam shall have the right to request and require updated certificates of insurance as a condition to any payment.

5. Subcontractor agrees to warrant all materials and installations and workmanship against defects and flaws for one year upon Subcontractor's receipt of Windjam's final payment. This warranty shall be at no additional cost to Windjam or the customer with whom Windjam is contracted.

6. Subcontractor understands that failure to appear on the jobsite on a scheduled workday without prior notice and approval may result in fines, back charges and or termination of the contract. Such termination and the accounting against Subcontractor for any such fines or back charges will be in the sole discretion of Windjam.

7. Subcontractor shall provide to Windjam and shall maintain on file with Windjam a current and valid W-9.

ARTICLE III – SAFETY STANDARDS, COMPLIANCE AND RESPONSIBILITY

1. Subcontractor shall be responsible for its own safety program and first aid and medical service for its agents and employees, notwithstanding any safety/first aid personnel which Windjam may employ at a work site. Safety equipment and safeguards suitable for the occupational hazards involved and conforming to the safety regulations at the work site must be furnished by Subcontractor.

2. In case of accident at a work site, an accident report must immediately be prepared by Subcontractor and a copy thereof given to Windjam. If Subcontractor utilizes



Windjam's first aid, medical, or related service, Subcontractor assumes the risks and hereby waives all damages related thereto. Subcontractor shall provide monthly claims and accident statistics, on a form provided by Windjam if requested.

3. In the event of suspension or termination for unsafe practices or issuance of a "Termination For Cause" and/or "Suspension", Subcontractor shall not be entitled to additional compensation or time extension for performance of the work.

4. Subcontractor shall provide adequate safety training, which shall include training and education regarding radio frequency emissions, and which shall be reviewed by Windjam upon request along with such other safety related information as Windjam may require. Failure to provide and maintain a Windjam approved safety program is a material breach of this Contract.

5. Subcontractors performing work shall assume complete responsibility for the safe performance of such work. Responsibility for the safe performance of the work extends not only to the Subcontractor and his employees or subs but also to any other person(s) the Subcontractor invites onto project property in connection with the work being performed.

6. Subcontractors shall comply with all laws, regulations, and codes concerning safety as shall be applicable to the work as well as shall comply with the safety standards specified in any contract documents, the specifications therein or otherwise herein. When so ordered by Windjam, Subcontractor agrees to stop any part of any work which Windjam deems unsafe until satisfactory corrective measures have been taken, and Subcontractor further agrees to make no claim for damages growing out of such stoppage. Should Subcontractor neglect to adopt such corrective measure, Windjam may have the measure performed and deduct the cost thereof from any payment due or to become due to Subcontractor.

7. Good housekeeping helps prevent accidents and is essential to the proper functioning of any job. Stairways, floors, walkways, and working areas shall be kept clear of obstructions and debris at all times. Subcontractor agrees to have its crews clean up the job site at the end of each day or more often as required to maintain a safe working environment. Subcontractor is responsible for any fines caused by their actions, inactions or work performed on site.

8. Subcontractor shall obtain approval from Windjam before any vehicle or equipment fuel storage area is established on site. Fuel storage facilities must meet all state and local code requirements and OSHA regulations.



9. The following are minimum precautions to be prescribed to by Subcontractor under the terms of this Agreement for work. These minimum precautions shall in no way relieve Subcontractor of the overall responsibility for the protection of personnel and properties. If clarification is necessary, Subcontractor shall consult with the Windjam. Subcontractor shall see that all employees, staff and subs are made aware of and adhere to these precautions:

(a) Subcontractor shall comply with Windjam contract terms herein and with all federal, state, local or industry safety codes and regulations as well as OSHA standards.

(b) Fall protection is required at all times when fall exposure of 6 feet or more exists or when required by any rules. Fall protection is required whether climbing, traveling from point A to point B, connecting structural steel, or erecting scaffolds or other temporary platforms. No Subcontractor or work operation is exempt from these fall protection requirements.

(c) Possession or use of intoxicating beverages, non-prescription drugs, or gambling is prohibited at all times. Those who report to work in possession of intoxicants or drugs, or under the influence of intoxicants or drugs, will be denied access or immediately removed from the site. Windjam reserves the right to conduct random drug test on all subcontractors and their employees with or without cause. Any employee found in possession of or under the influence of alcohol or other drugs while on the jobsite or its related properties will be barred from the jobsite and not be allowed to return. Such an occurrence may also be grounds for termination of this Agreement in the discretion of Windjam.

(d) Unsafe horseplay or practical joking creating unsafe environments is not permitted.

(e) Compressed air shall not be handled or used except in performance of work.

(f) Only approved power actuated tools shall be used. The operator of such tool shall be properly qualified. Other personnel in the area should be advised when such tools are in use.

(g) Subcontractors must supply their personnel with all necessary protective equipment. Wearing of hard hats by all personnel at all times during working hours, except when inside construction offices and change houses, and during entry and egress from the project is required. Other protective equipment shall also be used as required by law or by good safety practices, for example eye protection for burning, grinding, chipping, welding, etc. and protection related to radio frequency emissions, to the extent required by law, is



mandatory. Use of safety shoes is recommended. No open-toe shoes are allowed on job sites. Full clothing (long trousers and a shirt covering shoulders) shall be required at all times.

(h) Theft, abuse, misuse, or deliberate destruction of property or equipment on site in any manner is prohibited. Anyone caught tampering with or removing property will be prosecuted to the fullest extent of the law.

(i) Liquid or gaseous fuels being transported to equipment must be in an approved safety can. Those and all other flammable fluids on work property shall be stored only in approved areas, in approved safety containers properly identified, kept closed at all times, except when in use and used only for the purpose intended.

(j) Fire extinguishers, hose carts, and other emergency equipment must be kept free from obstruction for emergency use. Subcontractor shall make sure to be familiar with such equipment and its location.

(k) Subcontractor shall obey all no smoking and fire control signs. Smoking will be allowed only in areas designated as such.

(l) All job assembled rigging, ropes, cables, and hoisting equipment, etc. must have a minimum safety factor of five (5) and shall be regularly inspected. Adequate "Crosby" clips of the proper size shall be used. Chokers shall be one-half inch minimum size for snatch-blocks, chain hoists, etc.

(m) The raising and lowering of acetylene, oxygen, and other compressed gas cylinders shall be by use of approved carriers or cradles only. Material hoists shall be posted, "NO RIDERS." Riding on hooks is not permitted.

(n) Excavation areas should be roped off or barricaded and warning signs placed on the area margins. Personnel whose work does not require their presence near the excavation site should be warned to stay away.

(o) No gasoline or combustible type machines (welding, pump, etc.) will be allowed inside buildings. Machines, if used will be located outside or exhausted to the outside for proper ventilation.

(p) Subcontractor, when performing overhead work, shall be responsible for barricading ground or floor level below work area to protect personnel and shall post signs or station watchmen as warnings. Materials, tools, or equipment shall not be left overhead where they may fall.



(q) Subcontractors shall comply with project lockout/tag-out procedures. These procedures apply to all electrical power driven equipment, electrical circuits, generators, pumps, mixers, agitators, vibrators, motor operated valves, piping, etc. Subcontractors working in “confined area” and/or vessels shall comply with federal regulation for vessel entry where applicable. All electrical equipment, portable and otherwise, shall be adequately grounded.

10. Subcontractor agrees to participate in safety meetings as requested by Windjam.

11. Subcontractor agrees that any personnel on site will be authorized to work in the United States and have all required badges and/or identification on their person at all times.

ARTICLE IV – INSURANCE REQUIREMENTS AND INDEMNIFICATION

1. All insurance coverage shall be placed with an insurance company duly admitted in the State of North Carolina and such coverage shall be reasonably acceptable to Windjam. Insurance carriers utilized must maintain an A.M. Best rating of “A-” or better. Proof of insurance coverage shall be submitted, reviewed and approved by Windjam prior to performance of any work.

2. Subcontractor’s insured coverage shall apply as primary insurance notwithstanding any other insurance afforded to Windjam. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured 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. Coverage shall be required to be afforded to the named Additional Insured’s whether or not a claim is in litigation.

3. The insurance coverage required hereunder shall be of sufficient type, scope, and duration to ensure coverage for Windjam of liability related to any manifestation date within the applicable statutes of limitation and/or repose which pertain to any work performed by or on behalf of Windjam. Subcontractor agrees to maintain the above mentioned insurance for the benefit of Windjam for a period of ten years, or the expiration of the Statute of Limitations pursuant to the applicable law, whichever is later.

4. Each Certificate of Insurance shall provide that the insurer must give Windjam at least 30 days prior written notice of cancellation and termination of coverage hereunder. Not less than 2 weeks prior to the expiration, cancellation or termination of any such policy, Subcontractor shall supply Windjam with a new replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal of said original policy.



5. Required Commercial General Liability Insurance, Comprehensive Automobile Liability, Worker's Compensation & Employers Liability and Commercial Excess Liability limits **shall be as shown on the attached Exhibit B** as the same is fully incorporated herein by this reference and shall provide coverage as follows:

- (a) Coverage shall provide and encompass at least the following:
 - (i) Independent Contractors;
 - (ii) Blanket Contractual Liability
 - (iii) Occurrence Form;

6. The work performed by Subcontractor shall be at the risk of Subcontractor exclusively. To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless Windjam, affiliated companies of Windjam, their partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, attorneys, successors, and assigns, (the "Indemnified Parties") from and against any and all claims for bodily injury, death, or damage to property, demands, damages, actions, causes of actions, suits, losses, judgments, obligations and any liabilities, costs and expenses, which arise from or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by the Subcontractor or its agents. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of Subcontractor, its employees or agents, whether active or passive. Said indemnity and defense obligations shall further apply, whether or not said claims arise out of the concurrent act, omission, or negligence of the Indemnified Parties, whether active or passive. Subcontractor shall not be obligated to indemnify and defend Windjam for claims found to be due to the sole negligence of willful misconduct of Indemnified Parties. However, Subcontractor agrees to a waiver of subrogation as to Windjam in any event.

7. Subcontractor's indemnification and defense obligations hereunder shall extend to claims occurring after this agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are full and finally barred by applicable laws.

ARTICLE V – LIENS AND SUBCONTRACTS

- 1. Subcontractor shall promptly pay for all materials, equipment, labor and services used or employed in the work and shall maintain the materials, equipment, structures, premises, and other subject matter hereof, free from mechanic's and other liens.



2. Subcontractor will, upon completion of work and submission of invoices also furnish Windjam with written evidence that all labor, services, equipment, materials, and/or all lower-tier subcontractors have been paid in full. Subcontractor will provide original, executed liens waivers for both Subcontractor and any lower tier subcontractor. However, if Windjam has been required under the terms of its contracts to waive liens prior to payment, then Subcontractor shall provide such lien waivers on behalf of itself and all lower-tier subcontractors upon request by Windjam.

3. Recordkeeping, documentation, and all tax withholding shall be the responsibility of Subcontractor who certifies herein that it shall perform in conformity with the laws of the state where the work is performed.

4. Subcontractor shall notify Windjam in writing of the names of any and all lower-tier subcontractors proposed for any of the work and shall not subcontract any part of the work without the prior written consent of Windjam. Subcontractor may not subcontract the work as a whole. Subcontractor shall bind all lower-tier subcontractors to the provisions of this Agreement and any other contract documents, specifications or work orders.

5. Neither this Agreement nor any lower-tier subcontract agreement between Subcontractors and lower tier subcontractors shall create any contractual relationship between any lower-tier subcontractor and Windjam nor shall any obligations of Windjam to any lower-tier subcontractor arise out of any such agreements.

6. Notwithstanding the existence of any lower-tier subcontract, Subcontractor shall be liable to Windjam for performance hereunder as if no lower-tier subcontract exists.

ARTICLE VI – GENERAL PROVISIONS

1. This Agreement and all documents executed in connection herewith shall be deemed contracts made under the laws of the State of North Carolina and shall be construed and enforced in accordance with and governed by such laws.

2. It is agreed that any notices or deliveries which may be permitted or required under this Agreement shall be in writing and shall be deemed to have been duly given as of the day the same are deposited either in the United States Mail, Certified Mail, Return Receipt Requested, postage and charges pre-paid or with a nationally recognized overnight courier service such as Federal Express or United Parcel Service for next day delivery, and addressed as follows:



If to Windjam:

Rex Vick, Jr.
Windjam Companies
3434 Kildaire Farm Rd. Ste. 135
Cary, NC 27518
– or email to –
rvick@windjamdevelopment.com

If to Subcontractor:

3. This Agreement may be signed in counterparts, each of which shall be an original and each of which taken together shall constitute one agreement.

4. This Agreement may not be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, their respective successors and assigns. No other person or entity shall be entitled to claim any right or benefit hereunder, including, without limitation, any one claiming status as a third party beneficiary hereunder.

6. This Agreement, and any other documents executed in connection with this Agreement, are intended by the parties as the final expression of their agreement and, therefore, incorporate all negotiations of the parties hereto and are the entire agreement of the parties hereto. The parties hereto acknowledge that they are relying on no written or oral agreement, representation, warranty, or understanding of any kind.

7. In case any provision in this Agreement shall be held invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Agreement and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

8. This Agreement may not be amended, waived or modified in any manner without the prior written consent of the party against whom the amendment, waiver, or modification is sought to be enforced.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal as of the last day and year written below.

Windjam:

_____ (Company Name)

By: _____

Title: _____

Date: _____

Subcontractor:

_____ (Company Name)

By: _____

Title: _____

Date: _____



EXHIBIT A

The Windjam Companies

Windjam Development Group, LLC

Windjam Builder Marketing Group, LLC a/k/a Windjam Properties

Windjam 23, LLC

Windjam 7, LLC

Windjam 902, LLC

Sage Built, LLC

XR, LLC

Amaretto, LLC

Cohiba, LLC



EXHIBIT B

The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

- **Commercial General Liability Insurance** (including Premises & Operation, Independent Contractors, Blanket Contractual, Personal Injury, Products / Completed Operations Liability) on an "occurrence" form:

\$2,000,000 Products / Completed Operations Aggregate

\$2,000,000 General Aggregate (Per Project)

\$1,000,000 Any One Occurrence

\$1,000,000 Any One Person or Organization (Personal Injury)

Completed Operations must be maintained for two (2) years following completion of all Work under this subcontract. The General Aggregate shall apply on a "per project" basis.

If the Subcontractor's operations involve any such exposures, the Commercial General Liability Insurance may not contain and *x, c or u* exclusions.

If this subcontract involves the use of installation of any Exterior Insulation Finish System, commonly referred to as EIFS, the Subcontractor's Commercial General Liability Insurance may not contain any exclusion related to EIFS, and the Certificate of Insurance shall plainly reference, No EIFS exclusion".

- **Comprehensive Automobile Liability**

\$1,000,000 Each Accident

The coverage must apply to all owned, non-owned and hired autos used by the Subcontractor.

- **Workers Compensation & Employers Liability**

Coverage A: Statutory Workers Compensation Insurance for the state in which the subcontract Work is to be performed.

Coverage B: Employers Liability Insurance with minimum limits of liability as follows:

\$500,000. Each Accident

\$500,000. Each Employee for Injury by Disease

\$500,000. Aggregate for Injury by Disease

Coverage C: Other States Insurance

If the Work under this subcontract involves such exposure, the Subcontractor's Workers Compensation Insurance shall provide coverage for the United States Longshoremen and Harbor Workers Act.



- **Commercial Excess (Umbrella) Liability:** *(optional, dependent upon Scope of Work)*
\$1,000,000 Products / Completed Operations Aggregate

\$1,000,000 General Aggregate

\$1,000,000 Any One Occurrence

Coverage must be "Following Form" of the Subcontractor's Comprehensive General, Comprehensive Automobile and Employers Liability limits of liability, and at least as broad as the primary policies' coverage.

The Comprehensive General Liability, Comprehensive Automobile Liability and Commercial Excess (Umbrella) Liability policies shall contain an endorsement adding Windjam as well as its respective employees, agents and representatives as Additional Insureds with respect to any liability arising out of the Subcontractor's operations in the performance of the Work. Such Additional Insured coverage may be written on a "blanket" basis, but coverage afforded to Windjam must be at least as broad as that afforded by ISO form CG 20 33 and CG 20 37 or their equivalent. In no event shall the Additional Insured endorsement used exclude liability arising from the products or completed operations of the Subcontractor.

The Additional Insured coverage afforded Windjam must be stated to be primary and non-contributory, and any coverage carried by Windjam shall be secondary with respect to any claim arising from the Subcontractor's operations in the performance of the Work.

The Comprehensive General Liability, Comprehensive Automobile Liability, Workers Compensation / Employers Liability and Commercial Excess (Umbrella) Liability policies shall contain a Waiver of Subrogation in favor of Windjam.

Prior to any Work commencing under this subcontract, the Subcontractor shall cause his insurance agent or carrier to file a Certificate of Insurance with Windjam as Certificate Holder. The Certificate of Insurance shall reference the Project, and certify that the types of insurance, limits of liability and coverages required hereunder, including the Additional Insured, Primary and Non-Contributory Insurance, Waivers of Subrogation and Cancellation clauses referenced are in full force and effect. Copies of the Additional Insured Endorsements and Waivers of Subrogation must be attached to the Certificate of Insurance. The Certificate shall have an attached endorsement, or, copy of transmittal from agent to carrier requesting change in cancellation language to provide Windjam with 30 days written notice by Registered Mail. Any language stating "will endeavor to ..." shall not be accepted in the attachment.

It is understood that, upon request, Windjam will be provided a certified copy of any policy required herein from the Subcontractor.

Subcontractor bears all risks of loss and agrees to maintain proper insurance coverage for owned tools and equipment, as well as materials to be incorporated into the Project.