

NON-DISCLOSURE AGREEMENT

(For Subcontractors)

THIS NON-DISCLOSURE AGREEMENT (“Agreement”), is made and entered into as of this ____ day of _____, 2016, by and between **MITCH COX CONSTRUCTION, INC.** (herein “Contractor”) and _____ (herein “Subcontractor”).

WITNESSETH:

WHEREAS, Contractor is a corporation organized under the laws of the State of Tennessee, with its principal place of business located at 2304 Silverdale Road, Suite 200, Johnson City, TN 37601, which is engaged in the business of real estate development, construction, architecture, real estate sales, and commercial and residential property management; and

WHEREAS, Contractor has been, or may be, engaged by _____ (the “Prime Contractor” or “Owner”) for purposes of _____ (the “Project”); and

WHEREAS, the completion of the Project requires that Contractor engage subcontractors to provide services and materials and perform work on the Project; and

WHEREAS, Contractor will select subcontractors to perform services and/or provide materials for the Project based on materials submitted by subcontractors, including, but not limited to proposals, estimates, or bids; and

WHEREAS, Subcontractor desires to submit a proposal, estimate, or bid to Contractor to provide services, material, or perform work on the Project; and

WHEREAS, it is necessary for Contractor to disclose confidential and proprietary business information, including bid specifications, architectural drawings, design documents, construction plans, financial information, and other information, to Subcontractor to enable Subcontractor to bid on the Project that is the subject of this Agreement; and

WHEREAS, by virtue of disclosures Contractor intends to make to Subcontractor in accordance with this Agreement, Subcontractor will have possession of confidential and proprietary information belonging to Contractor, which information Contractor desires to protect in accordance with the terms of this Agreement; and

WHEREAS, Contractor is willing to provide such confidential information to Subcontractor only subject to the limitations set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

Initials: Subcontractor _____
Contractor _____

Section 1. Confidential Information. Except as set forth below, "Confidential Information" shall mean and include (a) the identity of any Prime Contractor or Owner, (b) any contract documents, bid specifications, requests for proposal, architectural drawings, design documents, and construction plans provided by Contractor to Subcontractor, (c) any bid, budget, estimate, or request submitted by Subcontractor to Contractor for the Project; (d) the nature, type, and existence of the Project, and (e) any financial, operational, technical, and other information which relates to or describes, in any manner the Project including the location, parties, or timing of the Project, or other information related to the Project, whether such information is provided in written, oral, graphic, pictorial or recorded form or stored on computer discs, hard drives, magnetic tape or digital or any other electronic medium.

Section 2. Ownership. Subcontractor hereby acknowledges and agrees that all of the Confidential Information provided by the Contractor to the Subcontractor shall be treated as the exclusive proprietary property of Contractor and shall be used by Subcontractor solely for purposes of evaluating and/or bidding on the Project for Contractor and only in such limited manner as is permitted by the provisions of this Agreement.

Section 3. Non-Disclosure of Confidential Information. Subcontractor agrees that the Confidential Information, and its existence and receipt, shall (a) be kept confidential by Subcontractor and not disclosed to any third party (except as provided in this Section 3), and (b) not be used by Subcontractor for any commercial or competitive purpose whatsoever. Notwithstanding the foregoing confidentiality requirements, Subcontractor is permitted disclose Confidential Information to third parties provided: (a) there is a legitimate business purpose for Subcontractor to disclose Confidential Information; (b) Subcontractor discloses the minimum amount of Confidential Information that is necessary to accomplish the legitimate business purpose; and (c) the third party to whom Subcontractor discloses the Confidential Information agrees to abide by and be bound by the terms of this Agreement by executing this Agreement below the signatures of the Parties hereto.

Section 4. Return of Confidential Information. Upon the request of the Contractor, at any time and for any reason, Subcontractor and its Representatives will: (a) return to the Contractor any Confidential Information whether stored in electronic, magnetic, or digital media and any working papers, memoranda, notes and other materials containing any Confidential Information or extracts therefrom, and Subcontractor and its Representatives shall not retain any copies thereof, and (b) if so requested by the Contractor, deliver a certificate of an appropriate executive officer certifying that all such Confidential Information within Subcontractor's possession or control has been returned and that no such Confidential Information has been retained.

Section 5. No Licenses. Neither the execution of this Agreement nor the furnishing of any Confidential Information pursuant to this Agreement shall be construed as granting Subcontractor or its Representatives, either expressly or by implication, any license or right to use any Confidential Information for its own benefit or the benefit of any other person, and Subcontractor expressly agrees not to so use any such information.

Section 6. Non-Disclosure of the Project. Subcontractor shall not announce or otherwise disclose the existence or identity of the Prime Contractor, Owner, or Project except for such disclosure as Contractor is hereafter advised by legal counsel is required by law, in which case Subcontractor shall provide Contractor with as much prior notice of such announcement or disclosure as is reasonably possible under the circumstances (and attempt in good faith to obtain Contractor's concurrence with the manner and extent of such disclosure).

Section 7. Prohibition on Unfair Competition. Following receipt of Confidential Information pursuant to this Agreement, Subcontractor agrees that it is prohibited from providing services or materials and/or performing any work for the Project related to the matters that were the subject of the Confidential Information provided by Contractor unless Contractor provides prior written permission for Subcontractor to provide such services or materials or perform such work.

Section 8. Prohibition on Insider Trading. Subcontractor hereby expressly acknowledges that it is aware of and will advise all of its Representatives who are informed as to any portion of the Confidential Information, that the Confidential Information delivered from time to time may contain information that could be material, non-public information under certain circumstances and that the United States securities laws prohibit any person who has material, non-public information regarding an issuer from purchasing or selling securities of that issuer without disclosure of such information or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities. The parties acknowledge that they are not currently in a position to determine and are not agreeing that the Confidential Information is or will be material information within the meaning of the United States securities laws; such determination would only be made the light of the circumstances under which disclosure or nondisclosure is considered.

Section 9. Non-Confidential Information. As used herein, the term "Confidential Information" does not mean and shall not include information which:

- (a) is or subsequently becomes publicly available without the breach of any obligation owed by Subcontractor to Contractor;
- (b) prior to disclosure hereunder is within the possession of Subcontractor, provided that such Confidential Information is not the subject of another confidentiality agreement with or other obligation of secrecy to or for the benefit of Contractor;
- (c) is disclosed with the prior written approval of Contractor; or
- (d) is obligated to be produced under order of a court of competent jurisdiction or a valid administrative, congressional, or other subpoena, civil investigative demand or similar process; provided, however, that upon issuance of any such order, subpoena, demand or other process, Subcontractor shall promptly notify Contractor and shall provide Contractor with an opportunity (if then available) to contest, at Contractor's expense, the propriety of such order or subpoena (or to arrange for appropriate safeguards against

any further disclosure by the court or administrative or congressional body seeking to compel disclosure of such Confidential Information).

Section 10. Immigration Compliance. Subcontractor represents and warrants it has complied with, and continues to comply with, all requirements of the Immigration and Reform and Control Act of 1986 (the "Immigration Act") with respect to its employees. No action or administrative proceeding been initiated or, to Subcontractor's knowledge, threatened against Subcontractor, by reason of any actual or alleged failure to comply with the Immigration Act.

Section 11. Immunity Provisions. Subcontractor understands and agrees that nothing in this Agreement prohibits it from reporting to any governmental authority information concerning possible violations of law or regulation and that Subcontractor may disclose trade secret information to a government official and use it in certain court proceedings without fear of prosecution, liability, or retaliation, provided Subcontractor does so in compliance with 18 U.S.C. § 1833.

Section 12. Governing Law and Jurisdiction. This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee. Any proceeding to enforce any provision of this Agreement or to determine the rights and duties of either party pursuant to this Agreement shall be filed in Tennessee state court located in Washington County, Tennessee, which court the parties agree shall have exclusive jurisdiction over all such matters and shall have jurisdiction over each party hereto.

Section 13. Remedies. Subcontractor acknowledges that Contractor would be irreparably harmed by a breach of this Agreement by Subcontractor or its Representatives and it may be difficult to estimate damages resulting from such a breach and, consequently, Contractor shall be entitled to injunctive or such over equitable relief as may be appropriate to prevent a breach or threatened or continuing breach of this Agreement, and to secure the enforcement of this Agreement, without foregoing any legal relief to which the Contractor may otherwise be entitled.

Section 14. Waiver. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege.

Section 15. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement may not be assigned by any party hereto without the prior written consent of the other party hereto.

Section 16. Entire Agreement. This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof, superseding all previous oral or written communications, representations, understandings, arrangements or agreements. The parties acknowledge and agree, however, that aspects of the relationship between Contractor and Subcontractor that are unrelated to non-disclosure of Confidential Information are or will be governed by other agreements.

Section 17. Headings, etc. The section headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Section 18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 19. Survival. All representations and warranties made herein shall survive the termination of this Agreement.

Section 20. Notices. In any case where any notice or other communication is required or permitted to be given hereunder, such notice or communication shall be in writing and (a) personally delivered, (b) sent by registered United States mail, postage prepaid, return receipt requested, or (c) sent by way of a recognized overnight courier service, postage prepaid, return receipt requested, with instructions to deliver on the next business day, in each case as follows:

(I) If to Contractor, to: Mitch Cox Construction, Inc.
2304 Silverdale Road, Suite 200,
Johnson City, TN 37601
Attention: _____

(II) If to Subcontractor, to: _____

Attention: _____

All such notices or other communications shall be deemed to have been received (a) upon receipt if personally delivered, (b) on the fifth day following posting if by registered United States mail, or (c) on the next business day following deposit with an overnight courier if sent by an overnight courier.

Section 21. Amendments. No amendment or modification of this Agreement or waiver of the terms and conditions hereof shall be binding upon Contractor or Subcontractor unless approved in writing by each of the parties hereto.

Section 22. Incorporation. Contractor and Subcontractor agree that this Agreement shall be deemed to be incorporated into and made a part of any contract, subcontract, or agreement which Contractor and Subcontractor may hereafter enter into in regard to the Project, and this Agreement shall be enforceable independently and as part of any such contract, subcontract, or agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Non-Disclosure Agreement by and through their respective duly authorized representatives as of the date first written above.

MITCH COX CONSTRUCTION, INC.

[NAME OF SUBCONTRACTOR]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____