

# INDEPENDENT CONTRACTOR AGREEMENT

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THIS AGREEMENT is made and entered into this \_\_\_\_\_ by and between: **Abbey Residential Services, Inc.**, with offices at **1930 Stonegate Drive, Vestavia Hills, Alabama 35242**, in its capacity as “Contractor” for **The Abbey at Autumn Village and the Ashford Townhomes**, the properties where the Work (as hereinafter defined) will be performed, and: \_\_\_\_\_, whose address is: \_\_\_\_\_ (hereinafter referred to as the “Subcontractor”).

The “Work” for this contract will be conducted at **The Abbey at Autumn Village and the Ashford Townhomes**.

## WITNESSETH:

**WHEREAS**, the Contractor and Subcontractor desire to enter into this Agreement upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, the parties agree as follows:

1. The Contractor retains the Subcontractor to perform and complete and the Subcontractor agrees to perform and complete the work described in Exhibit “A” attached hereto (hereinafter sometimes called the “Work”), upon the terms and conditions hereinafter set forth.
2. **Completion Date:** The Work shall be completed on or before the Completion Date stated in Exhibit “A”.
3. **Duties of Subcontractor:** The Subcontractor shall have the full and complete obligation and responsibility for the performance of the duties and Work described in the attached Exhibit “A” and the Subcontractor shall be obligated to the Contractor for the performance of all such duties and Work. It is expressly understood that the Contractor is interested only in the results to be achieved and the conduct and control of the Work will be the sole responsibility of the Subcontractor. Without limiting the foregoing, Subcontractor shall be solely and exclusively responsible for safety at the worksite.
4. **Performance by Subcontractor; Authority.** Subcontractor shall have sole control of the manner and means of his performance of his obligations under this Agreement, and he shall perform such obligations according to his own means and methods of work. Subcontractor shall have only such authority as is specifically provided for herein. Notwithstanding any other provision of this agreement, Subcontractor shall not have the authority to execute or enter into any contract, agreement, or other arrangement binding upon the Owner/Contractor on behalf of or in the name of the Owner/Contractor, whether oral or written. Subcontractor warrants that he has the necessary skill and training to perform all services required in this agreement. Subcontractor understands and agrees that Contractor will not provide any training. Subcontractor may sub-out his duties or hire employees or assistants to perform his duties, but Subcontractor shall be solely responsible for hiring and paying any such subs, employees or assistants.
5. **Time Requirements/Non-Exclusive Contract.** The Subcontractor shall devote such of his time, attention and energies to the fulfillment of this Agreement as may be necessary, but it is agreed that this is not a full time engagement. If, after satisfying his responsibilities to the

Contractor, the Subcontractor desires to render similar services to any other persons, or on behalf of any other firms, associations, or corporations, then Subcontractor may contract for such services.

6. **Fees to Subcontractor:** The Contractor shall pay the Subcontractor on a “per project” basis for services in connection with this Agreement, the exact amount and disbursement period for each project to be agreed upon in writing by the Contractor and the Subcontractor, prior to any Work being performed, or, in the alternative, per the attached Exhibits. Retainage, *if held*, will be as detailed in the Exhibits. Retainage will be paid upon completion, inspection and acceptance of all Work as outlined in the Contract Documents by the Contractor.
  
7. **Relation of the Parties; Tax Responsibilities:** The Subcontractor is retained by the Contractor only for the purposes and to the extent set forth in this Agreement and the Subcontractor’s relationship to the Contractor shall, during the term of this Agreement, be that of an Independent Contractor. Further, the parties agree that the Subcontractor is not an employee of the Contractor, and will not be treated as such for federal income tax purposes. In this regard the Subcontractor acknowledges and accepts all tax responsibilities imposed by the federal income tax laws, and any applicable state income tax laws on self-employed persons, including but not limited to the responsibility of paying (or withholding from income, if he employs others) the required amounts for federal income taxes, Social Security taxes, federal unemployment tax and applicable state income tax. *The Contractors shall not withhold, from sums becoming payable to the Subcontractor hereunder, any amounts for State or Federal Income Tax, FICA (Social Security) Taxes or any other applicable taxes, during the term of this Agreement.* The Subcontractor shall not be considered as having an employee status or as being entitled to participate in any plans, arrangements or distributions by the Contractor pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to the Contractor’s employees. Subcontractor agrees to provide Contractor with an affidavit stating that he meets all of the requirements for an independent contractor as may be required by applicable state law.
  
8. **General Liability and Worker’s Compensation:** Subcontractor warrants to Contractor that Subcontractor has and will maintain General Liability and Workman’s Compensation insurance in the state where the Work for this agreement is to be performed. Subcontractor’s insurance will name the Owner(s), Contractor and/or Agent(s) of the Property as additional insured’s. Subcontractor will provide an insurance certificate to Contractor, identifying The Abbey at Autumn Village, the Ashford Townhomes, Abbey Residential Services, LLC. JCI-Raleigh, LLC and Owner(s)/Agent(s), as named additional insured’s. If at any time during the term of this agreement Subcontractor’s insurance becomes expired, null or void for whatever reason, Contractor will have the right to immediately terminate this agreement and prevent Subcontractor from completing any further work on the property. Contractor may elect but is not obligated, to stop work on the project while Subcontractor reinstates his liability and/or worker’s compensation insurance. The Contractor will have the sole responsibility as to the decision to halt work and wait for Subcontractor to reinstate its insurance, or to award the balance of the unfinished scope of work under this agreement to another Subcontractor.

Subcontractor agrees that neither Subcontractor nor its subs or employees will file or assert any claims of any nature whatsoever against Owner/Contractor or its agents, partners, members, managers, officers, directors, shareholders, or employees, if Subcontractor or any of his sub’s or employees is injured or killed while performing services or duties for Contractor. Subcontractor further agrees to fully indemnify and defend Owner/Contractor and its agents, partners, members, managers, officers, directors, shareholders and employees

from any and all claims of any nature whatsoever for death or injury to Subcontractor and Subcontractor's subs or employees.

9. **Professional Responsibility:** Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by the Subcontractor in accordance with his independent and professional judgment. The Subcontractor shall perform his services substantially in accordance with generally accepted good practices and principles of his trade and as stated in the attached Exhibits. This Agreement shall be subject to the rules and regulations of any and all organizations and associations to which the Subcontractor may from time to time belong and to the laws and regulations governing the practice of the Subcontractor's trade in this State.
10. **Indemnification:** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless Owner/Contractor and its agents, partners, members, managers, officers, directors, shareholders, and employees, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this contract, including but not limited to any claims, damages, losses and expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligation of indemnity, which would otherwise exist as to a party or person described in this Paragraph 10.
11. **Disclosure of Information:** The Subcontractor agrees not to disclose to any one, either during or after this agreement terminates, any confidential information obtained by him as a result of this agreement without the consent of the Contractor. He further agrees that, on completion of this agreement, he will not take with him, without permission of the Contractor, any drawings, blueprints, or other reproductions, or any material of any kind. Furthermore, the Subcontractor agrees that he will not divulge to any person or persons not connected with the Contractor, any of its business methods, forms or names of customers.
12. **Business License:** Subcontractor agrees to purchase all business licenses required for the performance of his services.
13. **Termination by the Contractor:** If the Subcontractor fails or neglects to carry out the Work in accordance with the Contract documents or otherwise to perform in accordance with this Agreement, the Contractor may immediately terminate the Contractor and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the contract sum exceeds the expense of finishing the Subcontractor's Work, such excess shall be paid to the Subcontractor, but if such expense exceeds such unpaid balance, the Subcontractor shall pay the difference to the Contractor.
14. **Notice:** Any notice required to be given hereunder shall be deemed given immediately if hand delivered or on the third (3<sup>rd</sup>) business day following mailing of any such notice, postage paid, to the address set out herein above.
15. **Income Tax Designation:** In the event that the Internal Revenue Service should determine that the Subcontractor is, according to IRS guidelines, an employee subject to withholding and social security contributions, the Subcontractor shall acknowledge, as the Subcontractor acknowledges herein, that all payments to the Subcontractor are *gross payments*, and *the Subcontractor is responsible for all income taxes and social security payments* thereon.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals on the day and year first written above.

Signed, sealed and delivered in the presence of:

**“CONTRACTOR”**  
Abbey Residential Services, Inc.

**“SUBCONTRACTOR”**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT “A”**

### **The Scope of Work for this Contract is as Follows:**

See attached Exhibit “A” for scope of work

**The Completion Date shall be on or before April 30, 2010**