

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

CGG VENTURES, INC. d/b/a XCEL
ROOFING,

Plaintiff

v.

LUIS ROBLES d/b/a CENTRO HOME
IMPROVEMENT,

Defendant.

CASE NO.: _____

COMPLAINT

Plaintiff, CGG Ventures, Inc. d/b/a Xcel Roofing ("Xcel"), states and alleges the following for its claims for relief against Defendant, Luis Robles d/b/a Centro Home Improvement ("Centro").

Parties, Jurisdiction, and Venue

1. Xcel is a Nebraska Corporation with its principal place of business at 2430 S. 156th Circle, Omaha NE 68130.
2. Upon information and belief, Luis Robles is an individual residing at 3722 N. 55th St. in Douglas County, Omaha, Nebraska and doing business as Centro Home Improvement ("Centro").
3. Mr. Robles is not a minor, an incompetent person, or a person in the military services so as to be entitled to the benefits of the Servicemembers Civil Relief Act of 2003 (50 U.S.C. Appx. § 501 et seq.).
4. Jurisdiction in this Court is proper pursuant to Neb. Rev. Stat. § 24-302.
5. Venue is proper pursuant to Neb. Rev. Stat. §§ 25-401, *et seq.* because the Defendant resides in Douglas County, Nebraska.

General Allegations

6. On or about March 24, 2017, Centro entered into a Subcontractor Labor Agreement pursuant to which Xcel engaged Centro to provide roofing services and Centro accepted such engagement (the "Labor Agreement"). A true and correct copy of the Labor Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

7. The Labor Agreement is a non-exclusive agreement whereby Xcel could subcontract with other laborers for performance of any contract and by which Centro was free to perform services for other parties.

8. The Labor Agreement required that Centro comply with certain standards when it performed the work under the Agreement. In this regard, the Labor Agreement required Centro to:

a. "provide services in a good and workmanlike manner in accordance with the work order for work to be performed at each job site and in compliance with all applicable federal, state, and local laws, codes and regulations";

b. "promptly begin work as soon as notified by [Xcel] and to complete the work in a professional and workmanlike manner within a reasonable period of time once work is commenced, and in any event, by the deadlines established by [Xcel]."; and

c. "provide competent supervision, a sufficient number of skilled workers, and adequate and proper materials to maintain [Xcel's] work schedule."

Exhibit A, Labor Agreement ¶ 5.

9. The Labor Agreement makes clear that Xcel “is interested solely in the results to be obtained from [Centro’s services], and the manner and means used by [Centro] in providing the Services are matters solely within the authority and discretion of [Centro], subject to all applicable laws.” Exhibit A, Labor Agreement ¶ 5(g).

10. Pursuant to the Labor Agreement, Centro agreed to warrant against any defects in its workmanship. Specifically ¶ 11 of the Labor Agreement states:

For the avoidance of doubt, [Centro] acknowledges and agrees that [Centro] is responsible for the repair of any and all interior damages, including, but not limited to, mold remediation, resulting from [Centro]’s performance of the Services. Exhibit A, Labor Agreement ¶ 11.

11. The Labor Agreement also provides that Centro will protect, defend, indemnify, and hold Xcel harmless from and against any and all claims arising out of or related to (i) any breach of the Labor Agreement by Centro and (ii) any other third-party claims arising out of Centro’s services pursuant to the Labor Agreement. Exhibit A, Labor Agreement ¶ 15.

12. Centro was required to obtain comprehensive general liability insurance with limits of liability not less than \$1,000,000.00 per occurrence.

13. Pursuant to the Labor Agreement Centro agreed to obtain insurance coverage that listed Xcel as an additional insured on its comprehensive general liability insurance policy. Exhibit A, Labor Agreement at ¶ 10.

14. On or about July 23, 2017, Xcel entered into an agreement with Eulalio and Becky Araujo (“Homeowners”) to remove old roofing material and install new roofing material on their home (“Araujo Home”) (the, “Homeowner Contract”). The Homeowner Contract is attached hereto as **Exhibit B** and incorporated herein by reference

15. Pursuant to the Labor Agreement, Centro was hired to perform certain roofing work on the Araujo Home as an independent contractor of Xcel (the "Subcontract").

16. Xcel's business practice is to require its subcontractors to complete roof installations in one day whenever practicable in order to avoid leaving the home exposed to the elements.

17. In the event that a subcontractor cannot complete a roof installation within a single day, prior to leaving the job site, that subcontractor is responsible for securing the roof in a manner that will prevent any damage to the home on which a new roof is being installed.

18. On or about August 20, 2017, Centro began installation of the roof on the Araujo Home, but failed to complete the installation of the roof.

19. The portion of the roof that remained unfinished on that date included the very top of the roof or, "the ridge", which was open to allow for installation of a ridge vent.

20. In order to prevent water infiltration in the event of an overnight storm, Centro needed to properly secure/protect the opening at the ridge vent to prevent any potential or actual water infiltration into the home.

21. Centro made some attempt to cover the ridge vent opening with felt before leaving for the day.

22. A reasonably prudent contractor would have added a tarp over the ridge vent opening, in addition to the felt, to prevent water infiltration and to ensure the best protection for the Homeowners.

23. Centro failed to adequately and reasonably secure a cover over the ridge vent opening.

24. Centro failed to adequately and reasonably protect the home against water infiltration.

25. On or about August 20, 2017, the Araujo Home was subjected to a rain and wind storm.

26. As a direct result of Centro's failure to properly weatherproof the ridge vent opening, water from the storm infiltrated into the interior of the Araujo Home through the ridge vent.

27. The water infiltration caused by Centro's failure to properly protect the home caused substantial damage to the Araujo Home.

28. Centro's failure to perform its work in a good and workmanlike manner caused substantial damage to the Araujo Home.

29. Centro's failure to properly protect the home from the elements caused substantial damage to the Araujo Home.

30. Due to the damage caused by Centro's work, the Homeowners demanded remediation and repair of the damages caused by the water infiltration to the Araujo Home.

31. Xcel provided repairs of such damages to the Araujo Home at its expense in a total amount of not less than \$70,892.62.

32. The Homeowners have not paid Xcel for the work performed to remediate and/or repair damages caused by Centro's work on the Araujo Home.

33. Xcel demanded indemnification from Centro for the repairs.

34. Centro has failed and/or refused to indemnify Xcel.

COUNT I – CONTRACTUAL INDEMNIFICATION

35. Xcel incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

36. Xcel and Centro entered into the Labor Agreement.

37. Xcel and Centro entered into the Subcontract pursuant to the terms of the Labor Agreement.

38. The Homeowner's demand for repair of damages caused by water infiltration qualifies as a claim under the Subcontract and Labor Agreement that Centro is required to protect, defend, indemnify, and hold Xcel harmless from and against.

39. Xcel demanded that Centro indemnify Xcel from the Homeowner's claims.

40. Centro failed and/or refused to indemnify Xcel.

41. Centro breached the Subcontract.

42. Centro breached the Labor Agreement.

43. When Centro performed work on the roof of the Araujo Home on behalf of Xcel, Centro failed to exercise the requisite standard of care that a reasonably prudent contractor would have exercised when performing the aforementioned work, and/or Centro failed to perform all facets of the repair and replacement work at the Araujo Home in a professional and workmanlike manner.

44. The acts of Centro were the sole and proximate cause of the alleged damages to the Araujo Home.

45. As a result of Centro's actions, it is responsible and liable for the damages claims by the Homeowners.

46. The Labor Agreement is a valid, enforceable contract that obligates Centro to indemnify Xcel for any damages claimed by the Homeowners.

47. The Subcontract is a valid, enforceable contract that obligates Centro to indemnify Xcel for any damages claimed by the Homeowners.

48. Xcel has performed all conditions precedent to its right to receive indemnity from Centro, or such conditions have been waived.

49. Based on the foregoing, Xcel is entitled to be indemnified by Centro for repairs performed on the Araujo Home.

50. Xcel incurred costs totaling not less than \$70,892.62 to repair the damages caused by Centro's work on the Araujo Home.

COUNT II– BREACH OF CONTRACT

51. Xcel incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

52. Xcel and Centro entered into the Labor Agreement.

53. Xcel and Centro entered into the Subcontract pursuant to the terms of the Labor Agreement.

54. The Labor Agreement is a valid and binding contract.

55. The Subcontract is a valid and binding contract.

56. Pursuant to the Labor Agreement and Subcontract, Xcel retained Centro to perform work on the Araujo Home.

57. Xcel fully performed its duties under the Homeowner Contract and any responsibility to the Homeowners for breach of the Homeowner Contract falls on Centro, who failed to properly protect the Home from the elements when it left the job site.

58. The acts of Centro were the sole proximate cause of the damages to the Araujo Home.

59. Centro breached the Agreement and Subcontract by failing to perform its work in a good and workmanlike manner.

60. Xcel has performed all conditions precedent and substantially performed its duties under the Agreement and Subcontract.

61. Xcel was damaged by Centro's breach of the Subcontract in an amount not less than \$70,892.62.

COUNT III– NEGLIGENCE (In the Alternative)

62. Xcel incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

63. Centro owed a duty to Xcel to perform services on the Araujo Home in a reasonable manner.

64. Centro violated its duty to Xcel by failing to perform its work in a reasonable manner, including by failing to properly secure the ridge vent opening when Centro determined it could not complete the roof installation in a single day.

65. Centro's failure to perform its work in a reasonable manner was the sole proximate cause of damage to Xcel.

66. Xcel was damaged by Centro's negligence in an amount not less than \$70,892.62.

COUNT IV– COMMON LAW INDEMNIFICATION (In the Alternative)

67. Xcel incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

68. Centro failed to exercise the requisite standard of care that a reasonably prudent contractor would have exercised when covering the ridge vent opening.

69. Xcel fully performed its duties under the Homeowner Contract and any responsibility to the Homeowners for breach of the Homeowner Contract falls on Centro, who failed to properly secure the ridge vent opening.

70. The acts of Centro were the sole proximate cause of the damages to the Araujo Home.

71. As a result of Centro's actions, it is responsible and liable for the damages claimed by the Homeowners.

72. Any responsibility or liability of Xcel to the Homeowners for damages to the Araujo Home is vicarious only and is the direct and proximate result of the actions and conduct of Centro.

73. Any responsibility or liability of Xcel to the Homeowners for damages to the Araujo Home is solely due to the actions and conduct of Centro.

74. Centro is liable at common law to indemnify Xcel for any and all such liability of Xcel to the Homeowners.

75. Based on the foregoing, Xcel is entitled to be indemnified by Centro.

76. Xcel has been damaged by Centro's failure to indemnify it.

COUNT V– CONTRIBUTION (In the Alternative)

77. Xcel incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

78. Based on the foregoing, Xcel has a right of contribution against Centro based on the amount of fault so attributed to Centro.

WHEREFORE, CGG Ventures, Inc. d/b/a Xcel Roofing respectfully requests that the Court award damages to Xcel on the grounds set forth above in an amount to be proven at trial but in no event less than \$70,892.62, pre and post judgment interest, costs, and for such further and different relief as this Court deems just and equitable.

Dated: February 4, 2019.

CGG VENTURES, INC. d/b/a XCEL
ROOFING, Plaintiff,

By: *s/Elizabeth A. Hoffman*

J. Daniel Weidner, #23738
Elizabeth A. Hoffman, #25875
KOLEY JESSEN P.C., L.L.O.
One Pacific Place, Suite 800
1125 South 103rd Street
Omaha, NE 68124-1079
(402) 390-9500
(402) 390-9005 (facsimile)
Daniel.Weidner@koleyjessen.com
Elizabeth.Hoffman@koleyjessen.com

Attorneys for Plaintiff.

SUBCONTRACTOR LABORER AGREEMENT

This Subcontractor Laborer Agreement ("Agreement") is made and entered into effective this 24 day of March, 2017, by and between CGG Ventures, Inc. d/b/a Xcel Roofing ("Company") and Centro Home Improvements ("Laborer").

1. **Engagement.** Subject to the terms and conditions of this Agreement, Company hereby engages Laborer to provide roofing services ("Services"), and Laborer hereby accepts such engagement.

2. **Term.** The term of this Agreement shall commence as of the day and year written above and shall continue until terminated by either party as provided below.

3. **Compensation.** Laborer shall be paid in accordance with the rates for the Services, as determined exclusively by Company from time to time. Invoices in question will be held in their entirety until the disputed charge is resolved. Payment for a disputed charge may be delayed regardless of the specific project in dispute. Laborer acknowledges that any applicable penalties and costs of defense or response related to Investigations, as defined below, may be withheld from compensation otherwise due Laborer pursuant to this Section. Laborer further acknowledges and agrees that Company may, at its discretion, holdback some or all compensation otherwise owed pursuant to this Agreement pending expiration of the warranty period referenced below and Laborer's satisfactory resolution of any applicable warranty claims.

4. **Independent Contractor.** Company and Laborer agree that Laborer is being hired solely as an independent contractor and that neither Laborer, nor any of Laborer's independent contractors or employees, shall be deemed employees of Company. Consistent with this status, Laborer acknowledges and represents that Laborer is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the Services.

5. **Performance of Work.** Laborer will perform the Services in a good and workmanlike manner in accordance with the work order for the work to be performed at each job site and in compliance with all applicable federal, state, and local laws, codes and regulations. Laborer warrants that all permits, fees, taxes and expenses connected with such compliance will be paid for or obtained by Laborer in a timely manner.

a. **Commencement and Completion.** Laborer agrees to promptly begin work as soon as notified by Company and to complete the work in a professional and workmanlike manner within a reasonable period of time once work is commenced, and, in any event, by the deadlines established by Company. At all times, Laborer shall provide competent supervision, a sufficient number of skilled workers, and adequate and proper materials to maintain Company's work schedule.

b. **Cooperation.** Laborer shall cooperate with other trades who may also be on the jobsite, so that each may reasonably complete their respective work within the required timeframes. Laborer shall complete the work within a time that will allow any other trade whose work depends on the completion of Laborer's work to also complete its work.

- c. Deviations. No deviations from the work specified at each jobsite will be permitted or paid for, unless a written extra work or change order is first agreed to and signed by Company.
- d. Care of Materials. Laborer agrees to be diligent in the proper care of material supplied by Company. All usable materials are to be stored in an orderly way that protects the materials from wind, moisture and provides for general job site safety. All non-usable materials are to be culled and properly disposed of in trash bins provided by Company. Company may, at its sole discretion, find Laborer responsible for materials damaged due to negligent care by Laborer and Company has the right to set off the cost of the damaged materials from any amounts owed to Laborer under this Agreement. Laborer shall promptly notify Company of any defects in materials supplied by Company.
- e. Non-Conformity. If Company determines that Laborer's work does not conform to the provisions of the work order, or that the work is not of appropriate quality, Company shall so advise Laborer. If Laborer does not cure such defects or errors within the time period designated by Company, Company shall have the right to correct the defects and to set off the cost of such corrections from any amounts owed to Laborer under this Agreement.
- f. Clean-Up. Laborer agrees to clean-up and deposit all debris, trash and refuse generated during the performance of the Services at the end of each day into a trash bin. Laborer agrees to clean all walls, floors and other finished surfaces that are soiled as a result of the performance of the Services. Laborer further agrees to leave the job clean for the next trade. Laborer should notify Company if the job site has not been cleaned within acceptable practices by the prior trade. In the event Laborer fails to comply with the above clean-up procedures, Company shall so advise Laborer. If Laborer does not thereafter comply, Company shall have the right to set off the cost of debris removal and clean-up from any amounts owed to Laborer under this Agreement.
- g. Results. Company is interested solely in the results to be obtained from the Services, and the manner and means used by Laborer in providing the Services are matters solely within the authority and discretion of Laborer, subject to all applicable laws.
- h. Workers' Compensation Insurance. Because Laborer is a registered contractor and is therefore not considered a "Worker", Company will not obtain workers' compensation insurance for Laborer or Laborer's independent contractors or employees. Laborer agrees to maintain workers' compensation coverage for Laborer's employees, subcontractors, or other workers, if any, by purchasing workers' compensation insurance, maintaining a workers' compensation account in good standing, and furnishing a copy of a certification of workers' compensation insurance to Company. Laborer further agrees to maintain registration as a contractor pursuant to applicable law or regulation.
- i. Non-Exclusivity. Laborer is expressly free to perform services for other parties while performing Services for Company. Laborer acknowledges that Laborer is not

granted the exclusive right to perform Services for Company in any location and that Company may contract with other subcontractors to perform the same services as Laborer.

6. **Laborer's Independent Contractors or Employees.** Laborer may hire its own independent contractors or employees to assist in the performance of Laborer's duties hereunder. Laborer shall be solely responsible for tracking and maintaining all required wage and/or compensation data for any such independent contractors and employees and shall provide such data to Company or any governmental agency upon request

a. **Responsibility.** Laborer acknowledges and agrees that Laborer is and shall remain solely liable for all compensation, benefits, employment taxes, withholdings, costs and all other fees and expenses of any kind related to such independent contractors or employees. Laborer further acknowledges and agrees that Laborer shall be solely responsible for any and all penalties or fines that may be imposed as the result of Laborer's failure to comply with the responsibilities referenced in this Section. Laborer has no authority, right or power to employ or contract with any other person or entity on behalf of Company.

b. **Compliance.** Laborer agrees to comply with all employment tax requirements for withholding on any independent contractors or employees used by Laborer and to comply with state employment and workers' compensation laws.

c. **Eligibility for Employment.** Laborer represents and warrants that Laborer and Laborer's independent contractors and employees, if any, are authorized to work in the United States. Laborer understands that it is required to strictly adhere to immigration laws, including those forbidding the hiring and continued employment of individuals unauthorized to work in the United States and to fully and timely comply with employment verification procedures. Laborer affirms that it complies with all such laws and maintains appropriate records of the same. Laborer understands that should it be found not to be in compliance, that Company may cancel this Agreement immediately for cause. Laborer acknowledges and agrees that Laborer is solely responsible for any and all penalties or fines that may be imposed as the result of Laborer's failure to comply with the responsibilities referenced in this Section.

7. **Laborer Conduct.** Laborer agrees that it and its independent contractors or employees shall conduct themselves in a professional manner at all times and that Laborer shall be responsible for the actions of all such independent contractors or employees when performing the Services or when present at a job site. Laborer further affirms that it will not nor will it permit its independent contractors or employees to use or be under the influence of alcoholic beverages or drugs while performing the Services or present at a job site.

8. **Job Site Safety.**

a. Responsibility. Laborer agrees to assume responsibility for any applicable federal and/or state laws governing health, safety, accident prevention and environmental concerns, including, without limitation, the Federal Construction Safety Act and the Occupational Safety and Health Act of 1970, as amended ("OSHA"), the Environmental Protection Act of 1990, as amended ("EPA"), the Nebraska/Iowa State OSHA Plans, and all rules, regulations and standards promulgated thereunder, relating to a job site or to the Services to be performed by Laborer under this Agreement and any other performance of labor for Company. Laborer agrees to ensure compliance at its own expense. Company reserves the right to terminate this Agreement if Laborer engages in unsafe activities, as determined in Company's sole discretion.

b. Investigations. In the event a job site at which Laborer is performing Services for Company pursuant to this Agreement becomes the subject of an investigation or inspection conducted by any federal, state or local authority for purposes of assessing compliance with OSHA, EPA or any related state or local safety, health or environmental obligations (collectively, "Investigation"), Laborer acknowledges and agrees that Company, at its discretion, may stop payment on and holdback any amounts owed to Laborer by Company for Services performed pursuant to this Agreement pending resolution of the Investigation. Laborer represents and warrants that Laborer will fully cooperate in any Investigation and will provide all requested information to Company regarding the Investigation, including, but not limited to, written statements attesting to Laborer's full responsibility for ensuring compliance with OSHA and EPA requirements at all job sites where Services are performed. Laborer further acknowledges and agrees that in the event an Investigation results in a citation or other penalty against Company, Company may set off against any amounts otherwise owed Laborer for Services performed pursuant to this Agreement an amount equal to the sum of any penalty(ies) related to the Investigation and all costs, fees and expenses incurred by Company in defense of, or in responding to, the Investigation.

9. Health and Safety. Laborer agrees to exercise all precautions necessary to prevent accidents while performing the Services, which shall include abiding by all applicable safety standards for construction work promulgated by applicable government authorities. Laborer shall supply all protective eye wear, ear protections, head protection, fall protection equipment, etc. to its independent contractors or employees, or otherwise guarantee that all of its independent contractors and employees will possess and use the same. Laborer shall further ensure that its independent contractors or employees wear protective clothing (i.e., shirts and pants or shorts) and footwear (i.e., steel-toed boots) while performing the Services. Laborer represents that it and all of its independent contractors and employees have undergone proper safety training and have been properly trained and educated with regard to any hazardous material used in conjunction with the trade, as required by the state or federal law or as mutually agreed to by the parties. Laborer shall maintain an accident prevention program in accordance with applicable law and regulation to address safety issues that may arise while performing the Services, and will ensure that at least one person is available at all worksites, including all crew leaders and supervisors, who holds a valid first-aid certificate. Any hazardous materials, containers, or waste shall not be left on any job site by Laborer; Laborer is solely responsible for the abatement/containment of such materials and shall transport/remove such materials from the job site and dispose of the materials properly at Laborer's sole responsibility and expense.

10. **Insurance.** Laborer shall procure and maintain workers' compensation insurance (covering all individuals performing Services pursuant to this Agreement), employer's liability insurance, comprehensive general liability insurance, automobile liability insurance, products / completed operations insurance and personal advertising and injury insurance at its expense throughout the term of this Agreement, and for two years after its termination, with limits of liability not less than One Million and no/100 Dollars (\$1,000,000.00) per occurrence and Two Million and no/100 Dollars (\$2,000,000.00) in the general aggregate, or at such other limits of liability as otherwise determined by Company from time to time. These insurance policies shall contain a provision that coverage afforded under the policy shall not be canceled or not renewed until at least thirty (30) days' advance written notice has been provided to Company. Company shall be an additional insured on all such policies. Laborer shall obtain from all its insurers a waiver of subrogation on commercial general liability in favor of Company with respect to losses arising out of or in connection with the Services to be performed pursuant to this Agreement. Laborer shall provide Company with Certificates of Insurance, which Company will review and determine whether the policies meet its requirements in its sole discretion, prior to Laborer performing Services for Company. In the event Laborer elects to engage an independent contractor or subcontractor to assist with the performance of the Services pursuant to this Agreement that is not covered by Laborer's insurance, Laborer acknowledges that Laborer shall be responsible for ensuring that such independent contractor or subcontractor has procured insurance coverages at levels in an amount equal to or higher than those required of Laborer pursuant to this Section.

11. **Warranty.** Laborer shall warrant against any defects in workmanship and/or materials which were supplied by Laborer. Laborer's warranty shall be of the same standards and duration as the warranty provided by Company to the owner of the property upon which the Services were performed. A copy of Company's warranty is available on request. For the avoidance of doubt, Laborer acknowledges and agrees that Laborer is responsible for the repair of any and all interior damage, including, but not limited to, mold remediation, resulting from Laborer's performance of the Services.

12. **Termination.** If Laborer should default in the performance of any of its duties or obligations hereunder, and such default continues after verbal or written notice, Company may immediately terminate this Agreement. Upon termination, Laborer shall be due only such sums for approved work completed prior to the termination, less any set off Company may be entitled to, and Laborer shall furnish lien waivers to Company upon termination and payment. Otherwise, this Agreement may be terminated: (a) at any time by mutual written agreement of the parties; (b) by either party if the other party materially breaches any provision hereof; and (c) by either party, for any reason, upon seven (7) days' advance written notice.

13. **Mechanic's Lien.** Laborer shall furnish all partial and final lien waivers, which mean instruments executed by reason of payment or waiver of payment, and releases and sworn statements from all of Laborer's material and other suppliers, as may be required by Company and in a form satisfactory and acceptable to Company, as a condition precedent to partial and final payments from Company.

If any lien or other encumbrance or any claim of nonpayment for labor, materials or supplies furnished to Laborer is asserted, claimed or filed against Company's property and arises out of the performance of the Services, notwithstanding the furnishing of said lien waivers or sworn statements by Laborer or the making of any said payments to the Laborer, the Laborer shall protect,

indemnify, hold harmless and defend Company, and its successors and assigns, from and against all such liens and encumbrances and all costs, fees, losses, damages and expenses (including but not limited to attorneys' fees and litigation expenses) in connection therewith. Any such assertion or claim may be treated by Company as default of this Agreement and Company may take whatever action as it deems necessary to mitigate its damages and charge the cost and expense thereof to Laborer.

14. **Waiver of Subrogation.** Laborer hereby waives any and all claims for recovery from Company for any and all loss or damage.

15. **Indemnification.** Laborer agrees, to the fullest extent allowed by law, to protect, defend, indemnify, and hold Company, its affiliates and their officers, agents, servants and employees harmless from and against any and all claims, suits, proceedings, hearings, investigations, charges, demands, injunctions, costs, amounts paid in settlement and fees, including court costs and reasonable attorneys' fees (collectively, the "Claims") arising out of or related to (a) any breach (or claim or threat thereof that, if true, would be a breach) of this Agreement by Laborer; (b) any Claims initiated against Company by, or on behalf of, any personnel hired and/or contracted by Laborer; or (c) any other third-party claims arising out of Laborer's services pursuant to this Agreement, including, but not limited to, any Claims related to Investigations. Company shall have the right to withhold from any payments due Laborer under this Agreement the amount of any costs or fees for which Contractor has agreed to indemnify Company. Additionally, Laborer agrees to protect, defend, indemnify and hold Company, its subsidiaries, and their officers, agents, servants and employees harmless from and against any and all Claims for or on account of any injury to any person (including death) or any damage to any property which may arise (or which may be alleged to have arisen) out of or in connection with Laborer's or its independent contractors or employees' performance of the Services, even though such injury, death or damage may be (or may be alleged to be) attributable in part to negligence or other fault on the part of Company, its affiliates, or their officers, agents, servants or employees. If Company reasonably believes that Laborer will or has caused a Claim to be made or a lien to be filed against Company property, Company may retain any and all monies due Laborer and make such payments to Laborer and the claimant jointly. The obligation of Laborer to defend, indemnify and hold Company harmless shall not be enforceable if, and only if, it is determined by arbitration or judicial proceedings that the injury, death or damage complained of was attributable solely to the fault or negligence of Company, its subsidiaries, or their officers, agents, servants and employees and was not in any part attributable to Laborer or its employees or independent contractors.

Laborer agrees to reimburse Company for all sums which Company may pay or be compelled to pay in settlement of any Claim hereunder, including any Claim under the provisions of any workers' compensation law or any plan for employee benefits which Company may adopt. In any and all Claims against Company, its affiliates, or their officers, agents, servants or employees by any independent contractor or employee of Laborer, anyone directly or indirectly employed by him or anyone for whose acts Laborer may be liable, Laborer's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Laborer under workers' compensation acts, disability benefit acts or other employee benefit acts.

Company shall be entitled to withhold from payment any amounts otherwise due to Laborer pursuant to this Agreement such amounts as may be reasonably necessary to protect it against liability for any injury, death or damages resulting from the performance of the Services. In

addition, Laborer expressly acknowledges and agrees that Company shall be entitled to withhold from payment all costs incurred by Company and paid to its own insurer as a result of Laborer's failure to procure or maintain the insurance specified above in Section 10, including workers' compensation insurance.

16. **Choice of Law.** The laws of the state of Nebraska shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

17. **Assignment.** This Agreement and the rights, interests and obligations of Company hereunder shall be assignable and shall inure to the benefit of any parent, subsidiary or affiliate of Company or to any person or entity that succeeds to all or substantially all of the business or assets of Company. This Agreement is not assignable by Laborer.

18. **Remedies.** The parties hereto acknowledge that any breach or violation of any of the covenants or agreements contained in this Agreement will cause immediate and irreparable injury to Company. In the event of a breach or threatened or intended breach of this Agreement by Laborer, Company shall be entitled to all legal and equitable remedies available to it, including, but not limited to, injunctive relief to enforce Laborer's obligations under this Agreement.

19. **Modification or Amendment.** No Amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

20. **Unenforceability of Provisions.** If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

21. **Entire Understanding.** This Agreement and the exhibit attached hereto, which is incorporated herein and made a part of this Agreement by this reference, constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

22. **Headings.** Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

23. **Waiver.** Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

24. **Survival.** Laborer's obligations under Sections 11, 13, 14, 15, and 18 shall survive the termination of this Agreement by either party and regardless of the reason.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above. The parties hereto agree that facsimile signature shall be effective as if originals.

LABORER

Company

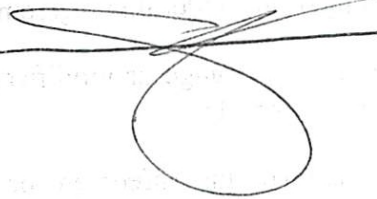
BY: Luis P. Robles

BY: Centro Home Improvements

ITS: _____

ITS: _____

Company

By: 

ITS: President



AGREEMENT

402-345-9235

4613 S. 139th St., Omaha, NE 68137

Locally owned
for over
25 years!



REP: Tim Coleman
PHONE: 402-413-5007

OWNER: <u>Eulalia Araujo</u>	DATE: <u>7/23/17</u>	EMAIL ADDRESS: <u>Jarajowilson@yahoo.com</u>
STREET: <u>2433 NW 43rd Street</u>	CELL PHONE: <u>(402) 540-9485</u>	WORK PHONE: _____
CITY: <u>Lincoln</u>	STATE: <u>NE</u>	ZIP: <u>68524</u>

We hereby submit scope of work for:

- ☒ Tear Off All
- ☒ # of Squares Off All
- ☒ Recover roof with OC Duration
- ☒ # of Squares On All
- ☒ Shingle/Color Amber
- ☒ Protect Property as Needed Daily
- ☒ Decking ☐ OSB ☐ CDX ☐ Other per Insurance
- ☒ Underlayment ☐ 15 lb ☐ 30 lb ☐ Other syn
- ☒ Metal Edge Color Brown
- ☒ Valley ☐ Closed ☐ Open
- ☒ Hip and Ridge ☒ Standard ☐ Enhanced
- ☒ Nails Coated Nails ☐ Open Eaves
- ☒ Pipe Flashings ☐ 3/1 ☐ Lead
- ☒ Ventilation ☐ Box ☒ Ridge ☐ Other
- ☒ Seal around all vents, pipes, flashings
- ☒ Ice & Water Shield to local code
- ☒ 5-Year Workmanship Warranty
- ☒ Furnish all materials, labor and necessary permits
- ☒ Delivery Instructions: ☐ Left ☐ Right ☐ Other

- ☒ CLEAN ALL GUTTER DEBRIS
- ☒ HAUL OFF CONSTRUCTION DEBRIS
- ☒ ROLL MAGNET THROUGH YARD
- ☒ LIEN WAIVERS PROVIDED UPON FINAL PAYMENT
- ☒ SIDING SPECS (Circle One)

of Squares off _____ # of Squares On per Insurance
Type: Vinyl Aluminum Other _____
Size: D4 D4.5 D5 Other _____
Profile: Dutch Lap Straight Lap
Color: _____ # of Squares On _____
House Wrap or Insulation Board

- ☐ GUTTER SPECS - Linear Feet
Gutter Size: 5" 6" Color: Brown
Downspout Size: 2x3 3x4 Color: Brown
- ☐ Gutter Screens or Helmet Style
- ☐ MISC SPECS _____

Extended
Warranty

☒ Manufacturer's Extended
Warranty

Terms: This Agreement is contingent upon insurance company price and approval. This Agreement does not obligate the Customer or Company in any way unless it is approved by Customer's insurance company and accepted by Company. Customer's signature below also signifies acceptance of all terms and conditions of this Agreement, including all terms on the reverse side hereof. In situations where supplements for additional work are necessary outside of the original scope of work (ex. additional layers or mismeasurements), Company will seek approval from insurance company. Customer's out of pocket expense not to exceed deductible plus upgrades for non-insurance related claim items. Payment Method: Payment Upon Completion Of Each Trade.

Customer Initial

<input type="checkbox"/>	Roofing Estimate	<input type="checkbox"/> Repair	<u>\$ Per Insurance RCV</u>
<input type="checkbox"/>	Siding Estimate	<input type="checkbox"/> Replacement	<u>\$ Per Insurance RCV</u>
<input type="checkbox"/>	Gutter Estimate	<input type="checkbox"/> Repair	<u>\$ Per Insurance RCV</u>
<input type="checkbox"/>	Misc Costs for:	<input type="checkbox"/> Replacement	\$ _____
<input type="checkbox"/>	Additional Upgrade or Non-Insurance Related Items		\$ _____
<input type="checkbox"/>	Overhead & Profit for the Complexity of Multiple Trades		\$ _____
<input type="checkbox"/>	Total Cost (tax Included)		\$ _____

Accepted by Owner By: Eulalia Araujo Date: _____
Representative Signature: [Signature] Date: 7/23/17

RIGHT OF CANCELLATION PURSUANT TO FEDERAL REGULATION AND NEB. REV. STAT. § 69-1604: YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

EXHIBIT B