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## **CONSTRUCTION CONTRACT**

Case Number: \_\_\_\_\_

Date: \_\_\_\_\_

Borrower Name(s): \_\_\_\_\_

Phone #: \_\_\_\_\_

\_\_\_\_\_

Phone #: \_\_\_\_\_

THIS CONSTRUCTION CONTRACT (“Contract”) dated as of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ (“Owner”) and \_\_\_\_\_ (“Contractor”).

Owner and Contractor, in consideration of the mutual covenants set forth below, agree as follows:

### **Article 1. Work.**

Contractor will perform the construction services identified in Exhibit “A” (“Work”) in accordance with the Contract Documents, as identified in Article 5 of this Contract on property which is located at \_\_\_\_\_ (“Property”).

### **Article 2. Contract Time.**

The Work will be completed on or before \_\_\_\_\_, \_\_\_\_\_ (“Completion Date”), subject to modifications in approved Change Orders, but no later than twelve (12) months after the loan closing date on the Property. The Work will be considered completed when Owner’s lender (“Lender”) obtains a certification of completion stating the Work was completed in accordance with the Contract Documents, and the final, unconditional certificate of occupancy issued by the responsible government authority, if required by law. Before starting the Work, Contractor will submit to Owner for review an estimated progress schedule indicating the starting and completion dates of various stages of the Work and the corresponding payments to be made to the contractor.

### **Article 3. Contract Price.**

Owner will pay to Contractor an amount equal to \$ \_\_\_\_\_ (“Contract Price”) for completion of the Work.

### **Article 4. Change Orders.**

Any increase or decrease in the Contract Price, change in the Work, or change in the

Contract Time must be set forth in a change order signed by Owner and Contractor, and approved by the Lender (“Change Order”).

## **Article 5. Contract Documents.**

The Contract Documents, which comprise the entire Contract between Owner and Contractor concerning the Work, consist of this Contract, Exhibit “A,” the blue prints, shop drawings, plans, and specifications for the Work (“Plans”), an itemized description of each segment of the Work that sets the timetable for completing the Work, and the corresponding payments for the Work (“Work and Payment Schedule”), and any Change Orders.

## **Article 6. Payment Procedures**

**6.1 Progress Payments.** Contractor will submit to Owner a request for payment in a format agreed to by Owner and Contractor and approved by Lender (“Request for Disbursement”), which will cover completed and inspected work.

Within ten calendar days after a Request for Disbursement is presented, Owner will notify Contractor if Owner has any concerns about the Request for Disbursement that Owner believes should be resolved before Owner pays the amounts specified in the Request for Disbursement, and, in this event, Owner and Contractor will promptly meet to address such concerns. Owner will pay Contractor ninety percent (90%) of the full amount covered by the Request for Disbursement within ten calendar days from the day it was presented while retaining ten percent (10%) thereof (“Holdback”) to be paid simultaneously with the final payment. Payment may be withheld for: (a) failure to perform the Work in accordance with the Contract Documents; (b) defective Work that is not corrected; or (c) failure of the Contractor to pay subcontractors or to pay for labor, materials, or equipment when due.

**6.2 Final Payment.** Final payment of the balance of the Contract Price, including the Holdback, will be made in accordance with the following procedures:

a. When Contractor considers the Work substantially complete, Contractor will notify Owner in writing. Within a reasonable time thereafter, Owner and Contractor will inspect the Work. Promptly after such inspection, Owner will deliver to Contractor a written punch list of the items that must be completed in order for the Work to reach final completion (“Final Completion”). Alternatively, Owner will deliver to Contractor a written statement that Final Completion has been reached because no punch list items remain to be completed.

b. If Owner delivers a written punch list to Contractor, then Contractor will deliver to Owner a written notice that the Work is finally complete when Contractor believes that the punch list items have been completed. Then Owner and Contractor will promptly inspect the punch list items. Promptly after such inspection, Owner will deliver to Contractor either (i) a written statement that Final Completion has been reached, or (ii) another written punch list of the items that still must be completed in order for the Work to reach Final Completion in which event the punch list procedure described above will be repeated until all punch list items have been completed.

c. When Final Completion has been reached, and after Contractor has delivered to Owner all maintenance and operating instructions, schedules, guarantees, certificates of inspection, marked-up record documents, and other documents, Contractor may make application for final payment following the procedure for progress payments. The final Request for Disbursement will be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to Owner and Lender) of all potential liens arising out of or filed in connection with the Work.

#### **Article 7. Interest.**

Payments due and unpaid to Contractor will bear no interest.

#### **Article 8. Contractor's Representation.**

In order to induce Owner to enter into this Contract, Contractor makes the following representation:

Contractor has familiarized itself with the nature and extent of the Contract Documents, Work site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work. Contractor is duly licensed to perform the Work as required by local laws and regulations.

#### **Article 9. Contractor's Responsibilities.**

9.1. **Performance.** Contractor will perform the Work in accordance with the Contract Documents. Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

9.2. **Personnel.** Contractor will provide competent, suitable personnel to perform construction services as required by the Contract Documents. Contractor will at all times maintain good discipline and order at the Property.

9.3. **Furnished Items.** Contractor will furnish and be fully responsible for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the Work, except as specified in the Contract Documents.

9.4. **Materials.** All materials and equipment will be of good quality and new, except as otherwise provided in the Contract Documents. All materials and equipment will be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable supplier.

9.5. **Subcontractors.** Contractor will be fully responsible to Owner for all acts and omissions of its subcontractors, suppliers, and other persons and organizations performing or

furnishing any of the Work under a direct or indirect contract with Contractor, just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents will create any contractual relationship between Owner and any such subcontractor, supplier, or other person or organization, nor will it create any obligation on the part of Owner to pay any such subcontractor, supplier, or other person or organization except as may otherwise be required by laws and regulations. Contractor will give Lender the name, address, and telephone number of each person that has a contract with Contractor to supply materials or labor for the Work.

9.6. **Permits; Inspections.** Contractor will obtain and will pay for all construction permits and licenses unless otherwise agreed to by the Owner in writing. Owner will assist Contractor, when necessary, in obtaining such permits and licenses. Contractor will pay all governmental charges and inspection fees necessary for the Work and arrange for all such inspections to occur if required. Contractor will give all notices and comply with all laws and regulations applicable to furnishing and performance of the Work.

9.7. **Taxes.** Contractor will pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the laws and regulations of the place of the Work which are applicable during the performance of the Work.

9.8. **Use of Premises.** Contractor will confine construction equipment, the storage of materials and equipment, and the operations of workers to the Property, and will not unreasonably encumber the Property with materials or equipment. Contractor will be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. During the progress of the Work, Contractor will keep the Property free from accumulations of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, Contractor will remove all waste materials, rubbish, and debris from and about the Property as well as all tools, appliances, construction equipment and machinery, and surplus materials, and will leave the Property clean and ready for occupancy by Owner.

9.9. **Record Documents.** Contractor will maintain in a safe place at the Property one record copy of all drawings, specifications, addenda, written amendments, Change Orders, and the like in good order and annotated to show all changes made during construction which will be delivered to Owner.

9.10. **Safety.** Contractor will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor will comply with all applicable laws and regulations relating to the safety of persons or property.

9.11. **Continuing the Work.** Contractor will carry on the Work and adhere to the progress schedule during all disputes or disagreements with Owner.

9.12. **Damage to the Work.** Contractor will repair or replace, at Contractor's sole expense, every portion of the Work that is damaged or destroyed prior to Final Completion and caused in whole or in part by the acts or omissions of Contractor. Notwithstanding the foregoing, Owner will bear the cost of such repair or replacement if the sole cause of the damage or destruction of the Work was Owner's negligence.

9.13. **Warranty.** Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. If within one year after the date of Final Completion, or such longer period of time as may be prescribed by laws or regulations, or by the terms of any specific provision or applicable special guarantee in the Contract Documents, any Work is found to be defective, Contractor will promptly, without cost to Owner and in accordance with Owner's written instructions, promptly either correct such defective Work, or if it has been rejected by Owner, remove it from the Property and replace it with non-defective Work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect, and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals) will be paid by Contractor.

9.14. **Indemnity and Hold Harmless.** Contractor will indemnify and hold harmless Owner against all loss, liability, cost expense, damage, and economic detriment of any kind whatsoever that arises out of or results from performance of the Work but only to the extent caused in whole or in part by the acts or omissions of the Contractor.

9.15 **Related Work at Property.** Owner may perform other work at the Property which is not part of the Work by Owner's own forces or let other direct contracts therefor. Contractor will afford Owner's own forces and each other contractor who is a party to such a direct contract proper and safe access to the Property and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work. Contractor will do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor will not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected.

## **Article 10. Insurance.**

10.1. **Contractor's Insurance.** Contractor will purchase and maintain the following insurance policies: (a) a builder's all risk insurance policy (with a mortgagee's loss payable clause in favor of Lender and with a physical loss form endorsement), without co-insurance, in an amount not less than one hundred percent (100%) of the replacement cost of the Work, with the standard conditions; (b) public liability insurance with limits of liability equal to at least \$500,000 per occurrence; (c) workers' compensation insurance as required by applicable state law; (d) automobile liability insurance with limits of liability equal to at least \$300,000 per occurrence for each vehicle that will be used in providing the services hereunder; and (e) other insurance as is appropriate for the Work being performed.

Before any Work is started, Contractor will deliver to Owner certificates or other evidence of the insurance that Contractor is required to purchase and maintain.

10.2 **Owner's Insurance.** Owner will be responsible for purchasing and maintaining Owner's liability insurance and other reasonably appropriate insurance.

## **Article 11. Termination.**

11.1 **Termination by Owner.** If the Contractor breaches any of its obligations under this Agreement, then Owner may give Contractor written notification identifying such breach. If Contractor has not cured such breach within seven (7) calendar days from its receipt of Owner's written notification, or if such breach cannot be cured within such seven (7) day period, then if Contractor either does not begin cure within such seven (7) day period, or fails to diligently prosecute cure to completion, Owner may terminate this Contract and take possession of the Work. Alternatively, instead of terminating the Contract, Owner may cure the breach and deduct the cost thereof from amounts otherwise owed to the Contractor.

11.2 **Termination by Contractor.** If the Owner breaches any of its obligations under this Agreement, then Contractor may give Owner written notification identifying such breach. If Owner has not cured such breach within seven (7) calendar days from its receipt of Contractor's written notification, or if such breach cannot be cured within such seven (7) day period, then if Owner either does not begin cure within such seven (7) day period, or fails to diligently prosecute cure to completion, Contractor may terminate this Contract.

## **Article 12. Miscellaneous.**

12.1. Assignment of any rights or interests under this Contract will not be binding on any party to this Contract without the written consent of such party. Payments due under this Contract may not be assigned. Notwithstanding the foregoing, the Owner hereby assigns all of its rights, title and interest in and to this Contract to the Lender, \_\_\_\_\_, having an address at \_\_\_\_\_, as additional security for the loan. The Contractor hereby consents to such assignment. Notwithstanding anything to the contrary in this Contract, upon a breach by the Owner of this Contract, the Contractor will give the Lender notice of such a breach, at the address set forth above, and provided that the Owner or the Lender cures such default within a reasonable period and continues to pay the Contractor all amounts due under this Contract, the Contractor will continue to perform its services under this Contract.

12.2. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives, to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

12.3. This Contract and all issues, disputes, and matters arising out of it will be governed by and construed in accordance with the law of the state in which the Property is located, exclusive of that body of law governing conflicts of laws.

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on \_\_\_\_\_, \_\_\_\_\_.

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

Address for giving notices:

License No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**  
**CONSTRUCTION SERVICES**