

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 19____, between

_____, whose address is

_____, hereinafter referred to as "Owner", and _____,

a _____ corporation, whose address is

_____, hereinafter referred to as "Contractor".

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

I. DESCRIPTION OF AND TIME FOR WORK. Contractor shall perform

in accordance with the contract plans and specifications, hereinafter called "contract documents", more particularly described in Exhibit "A", the following described work at

_____ located in _____, more particularly described in Exhibit "B". Contractor shall construct

_____ consisting of a _____, _____ square feet.

2. OWNER'S REPRESENTATIVE. Owner's representative (if applicable) for this project is

3. CONTRACT SUM OR AGREED PAYMENT TO CONTRACTOR. Owner agrees

to pay Contractor for the described work the total sum of _____ (\$ _____) Dollars. Payment of this amount is subject to additions or

deductions in accordance with Sections 15 & 16 hereof, and the other documents to which this contract is subject.

4. PROGRESS PAYMENTS.

- a. Contractor shall submit to architect a schedule of

values on the _____ of each month on a standard AIA form G-702(a) and, if appropriate, a G-702(b).

- b. Architect will examine said forms and approve, if

appropriate, said amounts by the 5th of the following month and submit said approval, if appropriate, to Owner or to Owner's lending institution for payment to Contractor.

- c. Within five (5) days thereof, Owner or Owner's lending

institution shall pay Contractor ninety (90%) percent of the amount approved by architect and retain ten (10%) percent as agreed retainage.

The final progress payment will be made when a Certificate of Occupancy is issued by the appropriate governmental authority. Upon issuance of the Certificate of Occupancy, Owner may retain that

portion of the contract sum computed as the lesser sum of the following:

- i. Ten (10%) percent of the contract sum, or
ii. Upon request for a final punch list by Contractor,

an evaluation will be made by the Owner's representative of the cost to complete the punch list. Owner may retain three hundred (300%) percent of the cost of completing the punch list.

Any progress payment not made within the time limits set forth above will earn interest at the rate of 18%, or, the minimum rate permissible at law.

5. FINAL PAYMENT. Owner shall make final payment to

Contractor within thirty (30) days after the work is completed, if the contract is at that time fully performed, and if Contractor has delivered to Owner a complete release of all liens arising out of the contract herein, or receipts in full covering all labor, materials, and equipment for which a lien could be filed, or, in the alternative, a bond satisfactory to Owner indemnifying him against such liens.

6. STARTING AND COMPLETION DATES. Work under this contract

shall begin upon issuance of a Notice of Commencement, and all work shall be completed within _____ (_____) days after issuance of the Notice of Commencement.

7. CONTRACT DOCUMENTS. The contract documents on which the

agreement between the Owner and Contractor is based, which contain the plans and specifications in accordance with which the work is to be done, and which provide for the method of payment of the contract sum, are as follows:

- a. This Agreement, with supplementary agreements and conditions attached thereto;
- b. The plans and specifications, with addenda attached thereto, issued before execution of this Agreement, and any amendments hereafter to be made;
- c. Written interpretations of the contract documents and directives to be made from time to time by Owner's representative; and
- d. Work change orders issued, or to be issued.

The contract documents together form the contract for the work herein described. The parties intend that the documents include provisions for all labor, materials, equipment, supplies, and other items necessary for the execution and completion of the work and all terms and conditions of payment. The documents also include all work and procedures not expressly indicated therein necessary for proper execution of this project.

The contract documents are to be separately executed, in duplicate, by Owner and Contractor.

Contractor, by executing the documents, represents that he has inspected and is familiar with the work site and the local conditions under which the work is to be performed.

8. DUTIES AND AUTHORITY OF OWNER'S REPRESENTATIVE. The duties

and authority of Owner's representative are designated as follows:

- a. General Contract Administration. The primary function

of Owner's representative is to provide general administration of the contract. In performing these

duties he shall represent Owner during the entire period of construction.

b. Inspection, Opinions, and Progress Reports. The

representative shall keep familiar with the progress and quality of the work by making periodic visits to the work site. He will make general determinations as to whether the work is proceeding in accordance with the contract documents.

c. Access to Work Site for Inspections. Owner's

representative shall be given free access to the work at all times during its preparation and progress. However, he is not required to make exhaustive or continuous on-site inspections to perform his duties of checking and reporting on work progress.

d. Rejection and Stoppage of Work. Owner's

representative shall have the authority to reject or stop work or a portion thereof which in his opinion does not conform to the contract documents.

e. Progress Payment Certificates. Owner's

representatives will determine the amount owing to Contractor as the work progresses. Such determination shall be based on Contractor's application and representative's inspections and observations. Representative shall issue certificates for progress payments and final payment in accordance with Sections 4 and 5 hereof.

9. DUTIES AND RIGHTS OF OWNER. Owner shall give all

instructions to Contractor through Owner's representative, shall furnish all necessary surveys for the work, and shall secure and pay for easements for permanent structural or permanent changes in existing structures or facilities on the work site where such are necessary for proper completion of the construction. Owner agrees to remove all existing equipment presently on the site from the site within seven (7) days of the issuance of the Notice of Commencement.

Owner reserves the right to let other contracts in connection with the project. Contractor shall cooperate with all other contractors to the effect that their work shall not be impeded by his work. Contractor shall give any subcontractors such access to the work site as may be necessary for performance of their contracts.

10. DUTIES AND RIGHTS OF CONTRACTOR. Contractor's duties and rights are as follows:

a. Responsibility for and Supervision of Construction.

Contractor shall be solely responsible for all construction under this contract, including the techniques, sequences, procedures, means, and coordination for all work. He shall supervise and direct the work, giving all attention necessary for such proper supervision and direction.

b. Discipline and Employment. Contractor shall maintain

at all times strict discipline among his employees and shall not employ for work on the project any person unfit or without sufficient skills to perform the job for which such person is employed.

c. Furnishing of Labor, Materials, Etc. Contractor shall

provide all labor, materials and equipment, including tools, construction equipment, machinery, utilities, including water transportation, and other facilities and services necessary for proper completion of work on the project in accordance with the contract documents.

d. Payment of Taxes; Procurement of Licenses and Permits.

Contractor shall pay for procurement of licenses and permits and all taxes required by law in connection with work on the project in accordance with this contract, including sales, use, and similar taxes, and shall secure all licenses and permits necessary for proper completion of the work, and the payment of

fees therefor.

e. Compliance with Construction Laws and Regulations.

Contractor shall comply with all laws and ordinances, as well as all rules, regulations, or orders of all public authorities relating to performance of the work. If anything set forth in any of the contract documents is at variance therewith, Contractor shall notify Owner's representative promptly on discovery of such variance.

f. Responsibility for Negligence of Employees and

Subcontractors. Contractor shall be fully responsible for all acts or omissions of his employees on the project, his subcontractors and their employees, and other persons doing work under any contract with him.

g. Warranty of Fitness of Equipment and Materials.

Contractor represents and warrants to Owner and Owner's representative that all equipment and materials used in the work and made a part of structures, or placed permanently in connection therewith, will be new unless otherwise specified in the contract documents, and will be of good quality, free of defects, and in conformity with the contract documents.

h. Samples and Shop Drawings. Contractor shall furnish

to Owner's representative upon representative's direction and for his consideration and approval all samples and shop drawings for representative's determination respecting the conformity of such with the specifications of the contract documents and the design concepts called for therein. Owner's representative will review and return such samples

and shop drawings within fourteen (14) calendar days

of receipt. In the event such samples or shop drawings are held by Owner's representative longer than fourteen (14) days, the Contractor shall be entitled to extended overhead for each day's delay.

i. Clean-up. Contractor agrees to keep the work premises

and adjoining ways free of waste material and rubbish caused by his work or that of its subcontractors although Contractor is not responsible for clean-up of tenant work not performed under this contract. He further agrees to remove all such waste material and rubbish on termination of the project, together with all his tools, equipment, machinery and surplus materials. He agrees, on terminating his work at the site, to conduct general clean-up operations,

including the cleaning of all glass surfaces, paved streets and walks, steps, and interior walls and floors.

j. Indemnification. Contractor agrees to indemnify Owner

and Owner's representative, and their agents and employees, from and against all claims, damages, losses and expenses, including reasonable attorneys' fees in case it shall be necessary to file an action, arising out of performance of the work herein, which are (1) for bodily injury, illness, or death, or for property damage, including loss of use, and (2) caused in whole or in part by Contractor's negligent act or omission, or that of a subcontractor, or that of anyone employed by them or for whose acts Contractor or a subcontractor may be liable.

k. Payment of Royalties and License Fees; Indemnification.

Contractor agrees to pay all royalties and license

fees necessary for the work, and to defend all actions and settle all claims for infringement of copyright or patent rights, and to indemnify Owner against all liability with respect thereto.

l. Safety Precautions and Programs. Contractor shall

provide for and oversee all safety orders, precautions, and programs necessary to reasonable safety of the work. In this connection, he shall take reasonable precautions for the safety of all work employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent thereto, compiling with all applicable laws, ordinances, rules, regulations, and orders.

11. TIME OF ESSENCE; EXTENSION OF TIME. All times stated herein or in the contract documents are of the essence.

The contract times may be extended by a change order from Owner's representative for such reasonable time as he may determine when in his

opinion Contractor is delayed in work progress by changes ordered, labor disputes, fire, prolonged transportation delays, injuries, or other causes beyond Contractor's control or which justify the delay.

12. SUBCONTRACTS. Prior to the execution of this contract, Contractor shall furnish to Owner's representative a list of names of subcontractors to whom he proposes to award the principal portions of the work to be subcontracted. A subcontractor, for the purpose of this contract, shall be a person with whom Contractor has a direct contract for work at the project site. Contractor shall not employ a subcontractor to whose employment Owner or his representative reasonably objects, nor shall Contractor be required to hire a subcontractor to whose employment he reasonably objects. All contracts between Contractor and subcontractors shall conform to the provisions of the contract documents, and shall incorporate in them the relevant provisions of this contract.

13. INSURANCE.

a. Contractor's Liability Insurance. Contractor agrees

to keep in force at his own expense during the entire period of construction on the project such liability insurance as will protect him from claims, under

workmen's compensation and other employee benefit laws, for bodily injury and death, and for property damage, that may arise out of work under this contract, whether directly or indirectly by Contractor, or directly or indirectly by a subcontractor. The minimum liability limits of such insurance shall not be less than One Million Dollars (\$1,000,000.00) covering bodily injury or death of one person, and not less than One Million Dollars (\$1,000,000.00) covering bodily injury or death in a single incident, and not less than One Hundred Thousand Dollars (\$100,000.00) covering property damages. Such insurance shall include contractual liability insurance applicable to Contractor's obligations under this contract. Proof of such insurance shall be filed by Contractor with Owner within a reasonable time after execution of this contract.

14. CORRECTING WORK. When it appears to Contractor during the course of construction that any work does not conform to the provisions of the contract documents, he shall make necessary corrections so that such work will so conform, and in addition will correct any defects caused by faulty materials, equipment, or workmanship in work supervised by him or by a subcontractor, appearing within one year from the date of issuance of a certificate of occupancy.

15. WORK CHANGES. Owner reserves the right to order work changes in the nature of additions, deletions, or modifications, without invalidating the contract, and agrees to make corresponding adjustments in the contract price and time of

termination. All changes will be authorized by a written change order signed by Owner or by Owner's representative. The change order will include conforming changes in the contract and termination time. Work shall be changed, and the contract price and termination times shall be modified only as set out in the written change order. Any adjustment in the contract sum resulting in a credit or a charge to the Owner shall be determined by mutual agreement of the parties or by arbitration before starting the work involved in the change.

In the event change orders are issued pursuant to the terms of this Agreement, the Contractor shall be entitled to an additional fee or profit on the basis of 7.5% of the cost of each change order.

16. EARLY TERMINATION FOR BREACH OF CONTRACT.

a. Contractor's Termination. Contractor may, on one

week's written notice to Owner and Owner's representative, terminate this contract before the termination date hereof when for a period of thirty (30) days after a progress payment is due, through no fault of the Contractor, Owner's representative fails to issue a certificate of payment therefor or Owner fails to make the payment. On such termination, Contractor may recover from Owner payment for all work completed and for any loss sustained by him for materials, equipment, tools, or machinery to the extent of actual loss thereon plus loss of a reasonable profit, provided he can prove such loss and damage.

b. Owner's Termination. Owner may, on one week's notice

to Contractor, terminate this contract before the termination date hereof, and without prejudice to any other remedy he may have, when Contractor defaults in performance of any provision herein, or fails to carry out the construction in accordance with the

provisions of the contract documents. On such termination, Owner may take possession of the work site and all materials, equipment, tools, and machinery thereon, and finish the work in whatever way he deems expedient, and charge the Contractor the difference between the price specified herein and the market price required to complete the project within the same period of time. If the expense of finishing the work exceeds the unpaid balance at the time of termination, Contractor agrees to pay the difference to Owner.

On such default by Contractor, Owner may elect not to terminate the contract, and, in such event, he may make good the deficiency in which the default consists and deduct the costs from the progress payment or to become due to Contractor.

c. Damages for late completion. Contractor shall be

liable to Owner in an amount equal to Five Hundred Dollars (\$500.00) per day for each day past the completion date more fully specified in Paragraph 6 herein above. Such sums shall be deemed liquidated damages for the purposes of delay damages only and such remedy shall be cumulative to and independent from any additional remedies herein set forth.

17. GOVERNING LAW. This agreement, and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of

_____. The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in _____ County, State of _____. In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of

competent jurisdiction if filed more than one year

subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

18. SEPARABILITY. If any provision of this Contract is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event the unenforceability or invalidity of any provision shall not affect any other provision of this Contract, and this Contract shall continue in full force and effect and be construed and enforced as if such provision had not been included or had been modified as above provided, as the case may be.

19. Contract sum includes the permit fee. Owner agrees that the plans must be "permit grade" and in a condition to obtain permit within seven (7) calendar days of Notice of

Commencement.

20. This contract is contingent upon Owner obtaining financing within forty-five (45) days of the date hereof. In the event that financing is not obtained within forty-five (45) days of the date of this contract, then this contract is thereby terminated, and Owner agrees to reimburse Contractor for any expenses incurred on the job, including but not limited to, a mobilization fee of One Thousand Dollars (\$1,000.00).

21. The adjustments compiled in a list attached hereto as Exhibit "C" are included in the contract amount.

22. Unless specifically disallowed by law, should litigation arise hereunder, service of process therefor may be obtained through certified mail, return receipt requested; the parties hereto waiving any and all rights they may have to object to the method by which service was perfected.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

Signed, sealed and delivered in the presence of:

"OWNER":

_____ By: _____

Witness Its President

_____ Attest: _____

Witness Its Secretary

"CONTRACTOR":

_____ By: _____

Witness Its President

_____ Attest: _____

Witness

Its Secretary

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 19 ____, by

, as Owner of

.

Notary Public

(SEAL)

State of _____

My Commission Expires:

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 19 ____, by

, as Owner of

.

Notary Public

(SEAL) State of _____

My Commission Expires:

EXHIBIT "A"

Plans and Specifications

EXHIBIT "B"

Job Site Location Legal Description

EXHIBIT "C"

Adjustments